



REPORT TO CREDITORS

44 CUMMINS STREET PTY LTD (IN LIQUIDATION)
("THE COMPANY")

ACN: 605 229 463

2 December 2022

PETER KREJCI
LIQUIDATOR

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INTRODUCTION

I refer to my previous reports to creditors in which my appointment as Liquidator was advised along with your rights as a creditor in the liquidation.

The purpose of this report is to provide creditors with information regarding the following:

- To provide an update to the creditors about the progress of the liquidation since the last report dated 20 May 2019; and
- To convene a Meeting of Creditors to consider necessary approvals detailed later in this report;

The Meeting of Creditors has been convened to be held at 11:00AM on Tuesday, 20 December 2022. A Notice of Meeting is attached as **Annexure "A"**.

Please note that this report should be read in conjunction with the previous reports detailed above. If you have any questions relating to the liquidation in general, or specific questions relating to your position, please do not hesitate to contact this office.

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GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

6 Addison	6 Addison
18 Falcon	18 Falcon Street Pty Ltd (deregistered)
ABN	Australian Business Number
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AXL	AXL Financial Pty Limited (in liquidation)
CL	Court Liquidation
Company	44 Cummins Street Pty Ltd (In Liquidation) ACN 605 229 463
DCoT	Deputy Commissioner of Taxation
Deed	Dee of Funding & Indemnity
Director	Alexander Gordon Johann Harmstorf
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
DOCA	Deed of Company Arrangement
Firm	BRI Ferrier NSW
GST	Goods and Services Tax
Hyperbuild	Hyperbuild Pty Limited (in liquidation)
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations)
Miss Kwoka	Izabela Kwoka (a.k.a. Izabela Roths & Malgorzata Izabela Kwoka) (former Director)
The Funder	KIAT Pty Ltd
Lawyers	ERA Legal
Liquidator	Peter Krejci
Mills	Mills Oakley Lawyers
Mr Roths	Oliver Roths (a.k.a Oliver Banovec) (Director of AXL)
PE	Public Examination
POD	Proof of Debt
PPSR	Personal Properties Securities Register

1 BASIS OF THE REPORT

In order to complete this report and conduct my investigations, I have primarily utilised information obtained from the books and records of the Company and the information received from the following sources:

- Evidence obtained from public examination;
- Documents such as bank statements provided by third parties;
- Financial statements extracted from MYOB;
- Extracts from public information database;
- ASIC searches; and
- Correspondence with creditors.

2 DISCLAIMER

An investigation of the Company's affairs has been conducted. As stated at section 1 above, this report, and the statements made herein, have been prepared based upon available books and records, evidence obtained from public examination, information gathered from third-party documents provided.

Whilst I have no reason to doubt the accuracy of the information provided or contained herein, I reserve the right to alter my opinion or conclusion should the underlying data prove to be inaccurate or materially change after the date of this report.

Neither I, nor any member or employee of BRI Ferrier, accept responsibility in any way whatsoever to any person in respect of any errors in this report arising from incorrect information provided to me, or necessary estimates and assessments made for the purposes of this report.

This report is not for general circulation, publication, reproduction or any use other than to assist creditors in evaluating their position as creditors of the Company and must not be disclosed without the prior approval of the Liquidator.

Creditors should consider seeking their own independent legal advice as to their rights and options available to them.

Should any creditor have material information in relation to the Company's affairs which they consider may impact on my investigations or report, please forward details in writing as soon as possible.

3 EXECUTIVE SUMMARY

I provide this Report as an update to creditors and shareholders on key matters in respect of the Company.

As creditors will recall, the Company was incorporated on 13 April 2015. It is a wholly owned subsidiary of AXL.

AXL is part of a group of companies trading as AXL Group Holdings. The Group operates as a provider of finance to the property sector and its key product offerings are: Broking services to Property

Developers, providing a platform for investors to lend to the Property Sector (under private mortgages); and direct lending to Property developers under private first registered mortgages.

The Company was a special purpose vehicle that acquired property at 44 Cummins Street Unanderra in April 2015 for the purpose of construction, development and sale of ten townhouses.

The Company realised approximately \$5.13M for the sale of dwellings constructed between 2015 and 2018. The Director advised that the Company had ceased trading in August 2018, due to the lender taking possession of the development.

On 23 January 2019, the Deputy Commissioner of Taxation filed a winding application against the Company.

On 20 February 2019, Ms Robyn Karam was appointed Liquidator of the Company pursuant to an Order of the Federal Court of Australia.

On 3 April 2019 the Federal Court of Australia appointed me, Peter Krejci, as replacement Liquidator.

Upon my appointment, I attempted to recover outstanding debtors/loans owed to the Company recorded in the management accounts. However, as discussed in Section 7 of this Report, all outstanding debtors/loans are non-recoverable.

My preliminary investigations identified a number of potential voidable transactions as discussed in the Statutory Report. Further investigations indicate it's uncommercial to pursue these transactions.

I conducted public examination of two individuals in February of this year. Evidence obtained during the course of the examination indicate substantial payments of circa \$1 million were made from the trust account of Mills, the Company's solicitors, to a number of parties under the instructions of Mr Roths a Director of AXL. It appears that these payments were without the authority of the Company's director. As such, demands have been issued to Mills, Mr Roths, Miss Kwoka and the Director requesting repayment of these funds as compensation to the Company.

After reviewing the evidence obtained from the first round of public examinations, I consider another round of examinations would assist with my investigations into potential recovery actions. As such, I have sought funding from external parties to conduct another public examination.

On 14 November 2022, a Deed of Funding and Indemnity ("the Deed") was entered between the Company, myself in my capacity as liquidator of the Company and the Funder. It is a condition precedent in the Deed that the Liquidator obtains approval of the Court or of the Company's creditors to enter into the Deed in accordance with the requirements of section 477(2B) of the Act. Therefore, it is my intention to seek approval from creditors in the forthcoming creditors meeting regarding same.

4 PREVIOUS REPORTS TO CREDITORS

I previously issued my Initial Report to Creditors dated 3 May 2019 and Statutory Report to Creditors dated 20 May 2019, both of which should be read in conjunction to this report.

5 DECLARATION OF INDEPENDENCE RELAVANT RELATIONS AND INDEMNITIES

I confirm that there have been no changes to the DIRRI dated 3 May 2019, which was previously circularised.

6 ASSETS AND LIABILITIES

I provide an update on my further investigations and actions taken regarding the debtors/loans that I previously identified in my Statutory Report. Those debtors/loans are listed in the table below.

Report Reference	Assets	Amount
7.1.1	Loans owed by Hyperbuild Pty Limited ("Hyperbuild Loans")	274,945.00
7.1.2	Loans owed by 18 Falcon Pty Ltd ("18 Falcon Loans")	125,000.00
7.1.3	Interest in 6 Addison Street, Shellharbour ("6 Addison")	328,047.00
	Total	727,992.00

Further investigations have been conducted with respect to the recoverability of the above debtors/loans. I have determined the debtors/loans are not recoverable. A summary of my investigations are provided as follows:

6.1 Hyperbuild Loans

Hyperbuild failed to respond to my demand requiring for repayment of the Hyperbuild Loan. I then instructed my solicitors to issue Hyperbuild with a statutory demand requesting repayment of the Hyperbuild Loan within 21 days being 18 June 2019.

On 4 July 2019, Domenic Calabretta and Grahame Ward of Mackay Goodwin were appointed Administrators and subsequently Deed Administrators of Hyperbuild upon Hyperbuild entering into a DOCA with its creditors. The DOCA subsequently failed causing Hyperbuild to be placed into Liquidation on 1 September 2019 upon which Mr Calabretta and Mr Ward were appointed Liquidators ("the Hyperbuild Liquidators"). As such, a proof of debt for the sum of \$274,945 dated 16 August 2019 has been submitted by the Company to the Hyperbuild Liquidators.

The Hyperbuild Liquidators' have advised that it is unlikely there will be a return to the creditors of Hyperbuild.

6.2 18 Falcon Loans

In response to my demand dated 18 April 2019, 18 Falcon shareholder, AXL, suggested 18 Falcon was in fact a creditor rather than a debtor of the Company.

Given the above position of AXL, on 28 May 2019, a statutory demand was served to Falcon Steet requiring repayment of the 18 Falcon Loan by 18 June 2019.

Upon failure to comply with the statutory demand, on 9 September 2019, I caused the Company to apply to the NSW Federal Court seeking an Order that 18 Falcon be wound up. On the 19 September 2019 those Orders were granted and Mr Richard Stone of RSM Australia was appointed Liquidator of 18 Falcon. I note that Mr Stone has completed his investigations into the affairs of 18 Falcon and applied to the ASIC for the deregistration of 18 Falcon which took effect on 5 July 2020.

6.3 Interest in 6 Addison

On 9 May 2019, I instructed my solicitors to lodge a caveat against property interests relating to 6 Addison Street, Shellharbour.

On 4 October 2019, Belmore Investments Pty Ltd, as mortgagee in possession of 6 Addison, completed the sale of 6 Addison. Given the mortgagee's debt was not satisfied from the proceeds of sale, I caused the caveat to be withdrawn.

Therefore, I do not expect any recovery from 6 Addison.

Other Assets

I refer to the discussion in the Statutory Report with respect to a bond of \$45,480 held by the NSW Office of Water.

I confirm that, on 24 July 2019, I received \$45,480 from the NSW Office of Water.

Non-Related Entity Creditor

I have since received a proof of debt from one unrelated entity creditor for the sum of \$15,399.

7 INSOLVENT TRADING

I refer to the Statutory Report with respect to my preliminary investigations of the solvency position of the Company and a potential insolvent trading claim.

My investigations indicate that the Company may have been insolvent from as early as 30 June 2016 and an insolvent trading claim is estimated to be circa \$524K. This amount is likely to increase due to the Company having outstanding returns with the DCoT.

I refer to Section 10 of this report with respect to my intention to conduct further public examinations in the Liquidation. My investigations into a potential insolvent trading claim continue and further information is expected to be obtained from the next round of public examinations to assist with the investigations.

8 VOIDABLE TRANSACTIONS

I refer to the Statutory Report with respect to my preliminary investigations of voidable transactions noting the following transactions required further investigations:

Voidable Transaction	Description	Amount \$
Unfair Preference	Payments to ATO	64,200.00
Uncommercial Transactions	Disbursement from proceeds of sale of property	309,344.81
Uncommercial Transactions	Disbursement from proceeds of sale of property	348,335.00
Total		721,879.81

As a result of the public examination discussed in section 9, I determined that these recovery actions should not be pursued for legal and commercial reasons.

9 FIRST ROUND PUBLIC EXAMINATION

On 9 December 2021, I made an application for public examination proceedings and examination summons to be issued to various individuals under Section 596 of the Act in the Supreme Court of New South Wales.

On 14 February 2022, a public examination was conducted on the following individuals:

- Tian Wang a recipient of one of the uncommercial transactions detailed in Section 8.
- Lachlan Paterson a partner Mills the Company's lawyers.

Summons for examination was also attempted to be served on Mr Roths, however, the process server was unable to locate him.

Evidence obtained during the course of the examination indicate substantial payments were made from the trust account of Mills, the Company's solicitors, to a number of parties under the instructions of Mr Roths. A summary of these payments is provided as follows:

Date	Recipient	Amount
12 October 2016	Tian 'Tim' Wang	\$348,335.00
3 November 2016	AXL Financial	\$134,427.96
3 November 2016	AXL Financial	\$193,620.43
10 November 2016	Mr Roths	\$373,554.14
Total		\$1,049,937.53

At the time that these payments were made, the Company was or would become liable to the ATO, given that the Company was an SPV developing and selling the lots located at 44 Cummins Street, Unanderra. In making these payments, the Company was deprived of its assets which ought to have been used to pay its creditors. In that regard, the Deputy Commissioner of Taxation has lodged a proof of debt in the winding up of the Company for an amount of \$524,185.

At this stage, it is unclear who instructed Mills to remit the abovementioned payments. If the Company directors gave those instructions, then it is the Liquidator's view that by allowing the above payments to be made, the Company's directors breached the duties they owed to the Company, including those duties set out in section 180 to 183 of the Act as well as duties at law as a fiduciary. Therefore, the directors are liable to compensate the Company.

On 29 July 2022, demands were issued to Miss Kwoka, the Director and Mr Roths by my solicitors, ERA Legal, requesting repayment of \$1,049,937.53. I have not received any repayments or a response to date from any party.

Further, as the Company's solicitors, it appears that Mills attended to making the payments without the Company's authority and accordingly Mills may be liable to make good the loss occasioned as a consequence of making the payments.

On 23 May 2022, a demand was issued to Mills by my solicitors requesting repayment of \$1,205,647.09 including interest accrued at Court rates from the time of the making of the payments ("the MO Demand").

On 17 June 2022, Mills responded to the MO Demand asserting the payments made under the Company's authority accordingly rejecting the repayment requested in the MO Demand.

I have commenced proceedings in the NSW Supreme Court with the filing of a Statement of Claim against Mills on 11 October 2022. I will provide an update to Creditors at the forthcoming meeting of Creditors on the status of this claim.

10 FURTHER PUBLIC EXAMINATION

After reviewing the evidence obtained from the public examination, I consider another round of examinations would assist with obtaining evidence into potential recovery actions. As such, I have sought funding from external parties to conduct further public examinations.

On 14 November 2022, the Deed was entered between the Company, myself in my capacity as liquidator of the Company and the Funder.

The Deed stipulated that the Funder provide funding to up to a limit of \$52,000 for the purpose of paying legal expenses and indemnifying the Liquidator with respect to any claims which are made against him arising out of or in connection with the carrying out of the public examinations.

It is a condition precedent in the Deed that the Liquidator obtains approval of the Court or of the Company's creditors to enter into the Deed in accordance with the requirements of section 477(2B) of the Act.

Therefore, it is my intention to seek approval from creditors in the forthcoming creditors meeting for the following resolutions:

- That the Liquidator be authorised to enter into an agreement with ERA Legal as disclosed in the Report to Creditors dated 2 December 2022. and
- That the Liquidator be authorised to enter into a deed of funding and indemnity with KIAT Pty Ltd as disclosed in the Report to Creditors dated 2 December 2022.

The major terms of the deed are:

- Creditor or Court approval must be obtained before 23 December 2022, failure to do so will cause the Deed to end.
- The Funder may provide funding prior to approval being obtained at the funders risk.
- The funding is limited to covering the legal expense of ERA Legal in doing all things necessary to conduct the public examinations.
- The funder indemnifies the Liquidator with respect to any Claims which are made against the Liquidator in connection with the public examination.
- The funder will be entitled to repayment of his costs incurred at the time of recovery plus a 30% uplift on those costs on any recovery in connection with future examination.
- Any recoveries made post the execution of the Deed, the funder will be entitled to be repaid only advances made by the funder at that time of the recovery.

11 LIQUIDATORS' RECEIPTS AND PAYMENTS

Enclosed in **Annexure "E"** is a summary receipts and payments report from the date of my appointment to the date of this Report.

Pursuant to section 70-5 of the Insolvency Practice Schedule, set out at Schedule 2 of the Act, I am required to lodge a statement of account annually during the Liquidation. In this regard, I have lodged a statement of account up to 2 April 2022 with ASIC. Creditors may request a copy of the lodged accounts by contacting this office.

12 LIQUIDATORS' REMUNERATION

At the creditors meeting held on 4 June 2019, I sought creditors' approval for my remuneration. Please find a summary of the remunerations sought and the outcome of creditors' approval as follows:

Period	Remuneration Sought \$ (excl. GST)	Remuneration Drawn \$ (excl. GST)	Approval Obtained
20 February 2019 to 17 May 2019	56,743.50	20,000.00	Yes
18 May 2019 to conclusion of the Liquidation	43,000.00	N/A	No
Total	99,743.50	20,000.00	

I have also drawn an additional remuneration of \$11,550.00 (incl. GST) from funding provided by ASIC for completing a supplementary report requested by ASIC.

During the course of the Liquidation, significant time-costs have been incurred. It is my intention to seek creditors' approval for my remuneration incurred.

The additional time-costs that have been incurred for the period from 3 April 2019 to 23 November 2022 are summarised as follows:

- Considerable work was required with respect to attempts to recover debtors/loan as discussed in Section 7 of this Report;
- Significant work was required with respect to preparing and conducting the public examination as discussed in Section 9 of this Report; and
- Substantial work was required with respect to liaising with my solicitors in relation to recovery actions and seeking funding for further public examination as discussed in Section 9 and Section 10 of this Report.

Creditors are referred to the following items set out at the Remuneration Approval Report attached as **Annexure "D"**:

- The hourly rates which also includes a guide showing the qualifications and experience of staff engaged in the liquidation and the role they take in the liquidation.
- The spreadsheet which sets out the calculation of remuneration by appointee, employee and position for the work undertaken by myself and my staff for the period 3 April 2019 to 23 November 2022.
- A summary sets out a general description of additional necessary work carried out for the period 3 April 2019 to 23 November 2022.

It is my intention to seek approval from creditors with respect to my remuneration incurred for the sum of \$383,167.50 for the period from 3 April 2019 to 23 November 2022. I am seeking approval that will replace the previously approval approved by Creditors for the period I have been appointed as Liquidator of the Company.

13 MEETING OF CREDITORS

A Meeting of Creditors of the Company will be held on Tuesday, 20 December 2022 11:00AM. The formal Notice of Meeting is attached as **Annexure "A"** for your reference.

To participate as a Creditor, you should:

- Provide me with a Proof of Debt detailing your claim to be a Creditor and/or eligible employee Creditor. Proofs of Debt are enclosed as **Annexure "B"**. If you have previously provided a proof of debt and wish to supplement it, you may do so. Otherwise, Creditors who have already lodged a proof of debt are not required to re-lodge for the Meeting of Creditors.
- Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy, copies of which is attached as **Annexure "C"**, must be in accordance with Form 532. Persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity.
- A specific proxy can be lodged showing approval or rejection of each proposal.

Proxy forms or facsimiles thereof must be lodged at my office by 4:00 PM one (1) business day prior to the meeting by email. Where a facsimile copy of a proxy is sent, the original must be lodged with my office within seventy-two hours after receipt of the facsimile. An attorney of a Creditor must show the instrument by which he or she is appointed to the Chairperson prior to commencement of the meeting.

14 MATTERS OUTSTANDING

The outstanding matters in the liquidation are:

- Hold meeting of creditors;
- Conduct further public examination subject to approval from creditors or the Court to entering into the Deed;
- Conduct recovery actions if it's commercial to proceed with same;
- Statutory Lodgements; and
- Finalisation.

Subject to the above, I anticipate that this Liquidation could be finalised within 1 to 2 years. ASIC will deregister the Company three (3) month after lodgement of the final return.

15 QUERIES

If creditors have any information which may assist me in my investigations, please contact my office as a matter of urgency.

Please note that Liquidators are not required to publish notices in the print media. ASIC maintains an online notices page for external administrators to publish notices in respect of companies. Creditors are encouraged to visit <http://insolvencynotices.asic.gov.au> throughout the liquidation to view any notices which may be published in respect of the Company.

ARITA provides information to assist creditors with understanding liquidations and insolvency. This information is available from ARITA's website at <http://arita.com.au/creditors>.

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at <http://asic.gov.au> (search for "insolvency information sheets").

The BRI Ferrier staff member responsible for this matter is as follows:

- BRI Contacts: Joshua Coorey
- Phone: (02) 8263 2300
- Email: jcoorey@brifnsw.com.au

- ▲ Mailing: GPO Box 7079, Sydney NSW 2001
- ▲ Facsimile: (02) 8263 2399

Yours faithfully

44 CUMMINS PTY LTD (IN LIQUIDATION)

PETER KREJCI

Liquidator