

MINUTES OF A MEETING OF COMMITTEE OF INSPECTION OF CULLEN GROUP AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 131 442 843 HELD AT THE OFFICES OF Aaromat Fencing at 20 Gasman Drive Yatala on 5 October 2017 at 8.30AM.

PRESENT

Michael Caspaney - Liquidator
John Goddard (Aaromat Fencing & Balustrade Pty Ltd)
Melissa Cuniffe (Melcun Constructions Pty Ltd)
Diann Elliott (Reo-force Steelfixing Contractors Pty Ltd)

Via telephone:

Julie Jones (Team Rock Anchor Queensland Pty Ltd)
Tom Caelli (SEQ Formwork and Hire)

Observer:

Matthew Pease from the Liquidator's office

Apologies:

David Mobberley (MBrick Pty Ltd)

APPOINTMENT OF CHAIRPERSON

It was resolved that Michael Caspaney be appointed Chairperson of the meeting.

QUORUM

The Chairperson declared that a quorum was present pursuant to division 80-5(6) of the Insolvency Practice Rules (*IPR*) in that a majority of members of the committee was present. The Chairperson declared the meeting as open at 8.39am.

INTRODUCTION & UPDATE

The Chairperson advised that the meeting had been called in accordance with the Notice of Meeting dated the 28 September 2017, the meeting having been advertised in the Australian Securities Investment Commission ("**ASIC**") Insolvency Notices web site <https://insolvencynotices.asic.gov.au> on the 28 September 2017. The Notice of Meeting was tabled.

ASSET REALISATIONS

The Chairperson outlined investigations undertaken to date and the proposed course of action for the potential realisation of assets and sought the committee's views thereon.

The Chairperson advised it appeared that much of the company's resources had been diverted into the Bay Terrace development. During his investigations, a multitude of evidence has been identified for a substantial claim to be made against the developers. The Chairperson has commenced proceedings in the Federal Court and Mr Rob Berry is currently finalising an expert report to assist in quantifying the claim. In total, nine land titles have been identified as still being registered in the developer's name and this will be the subject of the recovery actions. Caveats have been lodged on each respective title and will probably not be removed until the proceedings have been settled or if any of the titles is sold at a commercial value in the meantime.

During this process, the solicitors acting for one of the defendants, Thomson Geer, initiated proceedings against the company in the Supreme Court of Queensland in an attempt to remove the caveats. To facilitate consent orders which effectively put that claim on hold, Senior Counsel was briefed and approximately \$30,000 of legal fees were incurred. The legal firm Holman Webb have

now replaced Thomson Gear in acting for the developer due to Thomson Geer's conflict of interest as it had acted for the company from as far back as 2014. The Chairperson is working towards mediation discussions with hopes to begin this before the year's end.

Mr John Goddard asked what the combined value of the nine titles would be. The Chairperson said that a conservative estimate put that value at \$5.5M although based on discovery from the other side, the secured creditor is owed about \$1 million.

Ms Melissa Cuniffe asked if we were to be successful in our claim and recover all properties, could a subcontractor or another third party who may have been promised one of these properties in a private deal, make a claim against the Liquidator. The Chairperson advised that the caveats will protect the company's interest and that if any other party had a claim he would be surprised if they came forward and if they did it would be very difficult to justify ahead of the unsecured creditors of the company.

Mr Goddard then asked on the likelihood of recovery. The Chairperson advised that the success will depend on the strength of the expert report and other evidence that will be relied upon including the scope of the original contract and a number of variations which did not appear to have been accounted for by the company or paid by the developer.

The next topic to be discussed was Mr David Pearse's related entities. The Chairperson advised of potential recoveries against Davgan Pty Ltd ("Davgan") for approximately \$276,000; and Davan Developments Pty Ltd ("Davan") for approximately \$275,000.

Ms Diann Elliot asked why these entities owed us monies. The Chairperson explained that he had identified a payment of \$275,000 being made to Davan during the relation back period. He proceeded to write to Davan for an explanation and was advised that it was for a negative variation in the favour of Davan. This did not seem plausible and he will continue to pursue these funds as a voidable transaction.

In relation to Davgan, it has been identified that Davgan provided loan funds to the company on numerous occasions from as far back as April 2016 and that the company was unable to pay the funds back on time. Davgan then attempted to secure their interest against the company by registering an agreement on the PPSR on 15 December 2016. This registration was made well outside the required time and as such, all repayments made to Davgan during the relation back period are being pursued as voidable transactions against an unsecured creditor.

The Chairperson also advised of four other companies and the claims against them:

- BWD Developments Pty Ltd for approximately \$280,000;
- JCWC No. 1 Pty Ltd for \$112,000;
- Dawn Nominees Pty Ltd for \$170,000; and
- A partnership between Mr Pearse and Mr Bruce Macintyre for \$177,000.

The Chairperson is hopeful of settling all of these claims by the end of the year.

The next topic discussed was BG Developments Pty Ltd (In liquidation). The Chairperson advised that some funds had been released pursuant to a sub-contractors charge which had been ratified by the Court. There was also one other sub-contractor who was also going through this process and this is expected to be paid out in due course. There are further potential claims to be made against these funds by sub-contractors, however, The Chairperson believes he could still recover a substantial portion of the funds still being held on trust after the sub-contractors claims are settled. This matter was not being pursued until sufficient funds were available for this purpose.

Lastly, The Chairperson is still working on the recoveries of unfair preference claims and has settled a few of these matters. The Chairperson has also instructed solicitors to commence proceedings against several parties. These recoveries are ongoing and a full update will be provided in the next report to creditors.

Ms Elliot asked how much did the preference claims total and how long would it take to recover. The Chairperson advised it was several millions of dollars and the process of recovery was a lengthy one.

Ms Cuniffe then asked about the Ludwig St retentions which would be payable to the company shortly. She advised that \$160,000 is currently held in retentions with approximately \$250,000 of sub-contractor charges being claimed. The Chairperson advised that if the funds did become available, the sub-contractors would have to accept a portion of their claim as the retentions would not be sufficient in settling all the claims.

Mr Tom Caelli asked why sub-contractors with valid charges had not been paid yet considering other projects such as the Commonwealth Games Village where Grocon has paid their sub-contractors. The Chairperson advised that the Grocon situation was not the same as this company in that the state Government was involved as the major guarantor of the project. Further, the Chairperson does not hold enough funds to fight a legal battle with the Robina developers. If the Chairperson were to initiate proceedings for potential funds owing to the company, he may need to provide security for costs in the region of \$400,000. As this is not currently viable, the preferred strategy is to wait for the project to be completed so that actual costs incurred can be reconciled and a final accounting of the project expenses can be provided instead of relying on estimates which are currently being used by the developer. The Chairperson is hopeful of obtaining litigation funding if he is not holding sufficient funds at this time.

Mr Goddard then asked when the next report to creditors will be provided. The Chairperson advised that should any of the substantial claims be settled this year, an update will be provided otherwise an annual report will be due to the creditors early next year.

No further questions were raised.

SETTLEMENT WITH UNFAIR PREFERENCE CREDITOR

The Chairperson explained to those present that an unsecured creditor had agreed to terms on settlement of an unfair preference claim, however the time period for payment exceeded 90 days. Therefore, The Chairperson requires the committee's approval before accepting the terms of the settlement. The following resolution was put to the committee:

"That pursuant to section 477(2B) Corporations Act 2001, the Liquidator be permitted to enter into a deed of settlement with Nicoll Industries Pty Ltd (ACN 108 466 431) for the settlement of a voidable transaction claim whereas that deed of settlement covers a period of time that is greater than 90 days."

It was moved by: Aaromat Fencing & Balustrade Pty Ltd
Proxy in favour of: John Goddard
Seconded by: Melcun Constructions Pty Ltd
Proxy in favour of: Melissa Cuniffe

The resolution was carried unanimously.

REMUNERATION OF THE LIQUIDATOR

The Chairperson tabled the Remuneration Report sent to each creditor with the Notice of Meeting. The Chairperson referred to and discussed the Remuneration Report. The following resolution was put to the committee:

"That the actual remuneration of the Menzies Advisory Liquidator, partners and staff from 24 January 2017 to 31 March 2017 are all proper costs, charges and expenses"

of and incidental to the winding up, and that same be capped on a time basis at rates calculated in accordance with Menzies Advisory's Schedule of Hourly Rates issued on 1 July 2016, up to a limit of \$204,853.00 plus GST as stipulated in the Liquidator's Remuneration Report dated 28 September 2017 and that the Liquidator be authorised to make periodic payments on account of such accruing remuneration. Out of pocket expenses and disbursements plus GST are additional."

It was moved by: Aaromat Fencing & Balustrade Pty Ltd
Proxy in favour of: John Goddard
Seconded by: Melcun Constructions Pty Ltd
Proxy in favour of: Melissa Cuniffe

The resolution was carried unanimously.

The Chairperson tabled the previous Liquidator's Remuneration Report sent to each creditor with the Notice of Meeting. The Chairperson referred to and discussed to the previous Liquidator's Remuneration Report. The following resolution was put to the committee:

"That the remuneration of the Pearce & Heers Liquidators for work performed by them and their staff for the period from 22 December 2016 to 24 January 2017, calculated on a time basis in accordance with the hourly rates used by Pearce & Heers Insolvency Accountants, be fixed and approved in the amount of \$16,879.73 plus GST and the Liquidators be authorised to draw this at their discretion."

There was discussion around the performance of the previous Liquidators and members of the committee were concerned that the remuneration claim being made was excessive considering the Liquidators' first estimate to creditors was for only \$75,000 for the whole liquidation to be completed. The committee decided to adjust the previous liquidators' remuneration to an amount that reflects that which is currently held in their administration account. Accordingly, the resolution was amended from \$141,352.56 to \$16,879.73.

It was moved by: SEQ Formwork and Hire
Proxy in favour of: Tom Caelli
Seconded by: Melcun Constructions Pty Ltd
Proxy in favour of: Melissa Cuniffe

The resolution was carried unanimously.

The meeting was closed at 10:03am.

Signed as a correct record.

DATED this 9th day of October 2017.



CHAIRPERSON