

Advisory

# *Second Report to Creditors* J M Kelly Builders Pty Ltd (Administrators Appointed)

13 November 2018

**pwc**

13 November 2018

To the Creditor as addressed

.....  
**J M Kelly Builders Pty Ltd**  
**(Administrators Appointed)**  
**ACN: 009 801 665**

We refer to previous correspondence and advise that, in accordance with Section 439A of the Act, the Second Meeting of the Company's creditors will be held at Leichhardt Hotel, Cnr Denham & Bolsover St, Rockhampton, QLD 4700 on Wednesday, 21 November 2018 at 10.00am AEST.

Enclosed for your attention are the following:

- Second Report
- Statement of Administrators' Opinion (*Appendix 1*)
- Notice of Second Meeting (*Appendix 2*)
- Form 532 – Appointment of Proxy (*Appendix 3*)
- Informal Proof of Debt (*Appendix 4*).

Should you have any queries, please contact us on the Creditor hotline by telephone on (07) 3257 5679, or by email to [creditorsjmk@au.pwc.com](mailto:creditorsjmk@au.pwc.com).

Yours faithfully



**Derrick Vickers**  
Administrator

PwC Australia is a partnership fully owned by over 400 partners Australia wide. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.



**PricewaterhouseCoopers Australia**  
Level 23, 480 Queen Street, Brisbane Qld 4000  
T: +61 (7) 3257 5000  
F: +61 (7) 3257 5909

# Contents

<b>Transmittal Letter</b>		<b>2</b>
<b>Disclaimer</b>		<b>6</b>
<b>At a glance</b>		<b>7</b>
<b>Background</b>		<b>13</b>
1	Administrators' independence	14
2	Purpose of the appointment and Second Report	16
3	First Meeting	17
4	Statutory information	18
5	Company and business background	20
6	Events leading to our appointment	21
7	Reasons for failure	23
<b>Strategy</b>		<b>24</b>
8	Trading decisions	25
9	Actions taken by the Administrators	26
<b>Report as to Affairs</b>		<b>31</b>
10	Summary of RATA	32
<b>Investigations</b>		<b>35</b>
11	Overview	36
12	Reporting to Regulators	37
13	Public examinations	38
14	JM Kelly Group intercompany loans	40
15	QBCC	42
16	Progress claims	43
17	Project Builders	44

# Contents

18	Books and Records	45
19	Timing of insolvency and insolvent trading	46
20	Voidable transactions	49
21	Directors' duties	52
22	Other investigations	53
	<b>Receipts and Payments</b>	<b>54</b>
23	Receipts and Payments summary	55
	<b>DOCA</b>	<b>56</b>
24	Deed of Company Arrangement Proposal	57
	<b>Return to Creditors</b>	<b>58</b>
25	Estimated Return to Creditors	59
26	Priority creditors (employees)	60
	<b>Second Meeting</b>	<b>61</b>
27	Second Meeting	62
28	Completion of proof of debt and proxy forms	63
29	Matters to be decided at the Second Meeting	64
30	Committee of Inspection	65
	<b>Remuneration</b>	<b>66</b>
31	Administrators' remuneration	67
	<b>Statement of Administrators' Opinion</b>	<b>68</b>
32	Administrators' opinion	69
	<b>Appendices</b>	<b>70</b>
1	Statement of Administrators' Opinion	71
2	Notice of Second Meeting	72

# Contents

3	Form 532 - Appointment of Proxy	73
4	Informal Proof of Debt	74
5	DIRRI	75
6	Registered charges	76
7	JM Kelly Group Structure	77
8	JM Kelly Management Pty Ltd intercompany loans	79
9	Remuneration report	81
10	ASIC - Insolvency information for directors, employees, creditors and shareholders	82
11	Glossary	83

## *Disclaimer*

In reviewing this Second Report, readers should note:

- This Second Report is based upon our preliminary investigations. Any additional material issues that are identified after issuing this Report may be the subject of a further written report and /or tabled at the Second Meeting.
  - The contents of this Second Report are based on information obtained from the Company's books and records, financial systems, representations from the director, key management, and our own enquiries and investigations.
  - The statements and opinions given in this Second Report are given in good faith and in the belief, that such statements and opinions are not false or misleading. Except where otherwise stated, we reserve the right to alter any conclusions reached based on any amended or additional information which may be provided to us between the date of this Report and the date of the Second Meeting.
  - Neither the Administrators, PwC nor any member or employee of the firm is responsible in any way whatsoever to any person in respect of any errors in this Second Report arising from incorrect information provided to us.
  - The Administrators do not assume or accept any responsibility for any liability or loss sustained by any creditor or any other party because of the circulation, publication, reproduction, or any use of the information presented in this Report.
- This Second 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 written approval of the Administrators.
  - Creditors should consider seeking their own independent legal advice as to their rights and the options available to them at the Second Meeting.

## *At a glance*

### **1. Appointment of Administrators**

On 17 October 2018, Derrick Vickers and Michael Owen were appointed as Joint and Several Administrators of the Company in accordance with Part 5.3A of the Act.

Our appointment was made by a resolution passed at a meeting of the Company's director held on 17 October 2018 pursuant to Section 436A of the Act.

The purpose of the appointment of the Administrators is to allow for independent insolvency practitioners to take control of the assets and investigate the affairs of the Company and the actions of its officers.

As Administrators of the Company, we are required to provide creditors with information relevant to making an informed decision on the future of the Company. Therefore, this Second Report contains the following information:

- background information about the Company and its financial affairs
- an update on our preliminary investigations into insolvent trading, voidable transactions and other possible offences
- the options available to creditors, and our opinion on each of those options.

### **2. Purpose of the Second Report**

The purpose of this Second Report is to assist creditors in their decision about the future of the Company in accordance with IPR 75-225 of the Act.

The Second Report is based on information obtained from the Company's books and records, financial systems, company officers, employees and advisors and our own enquiries and investigations.

Readers should note that this Second Report is based on our investigations to date. Accordingly, the views formed in this Second Report are not final and may be subject to change. Any additional material issues that are identified after this Second Report may be subject to a further written report posted on PwC's website and / or tabled at the Second Meeting.

## At a glance

### 3. Second Meeting

The Administrators are required to hold a Second Meeting at any time during, or within five business days of the end of the Convening Period. The principle purpose of the Second Meeting is for creditors to decide the future of the Company, by choosing one of the following three options:

1. the Company execute a DOCA, which is an arrangement between a company, its creditors and the proponents of the DOCA, which will result creditors being paid in accordance with a prescribed framework; or
2. the administration of the Company ends and control of the Company reverts to the director; or
3. the Company be wound up and liquidators appointed.

If necessary, a resolution may be put to the meeting to adjourn the meeting for up to 45 business days.

The Second Meeting will be held:

**Date:** Wednesday, 21 November 2018

**Time:** 10.00am AEST (Qld time)

**Place:** Leichhardt Hotel  
Cnr Denham & Bolsover Streets  
Rockhampton QLD 4700

Further details of the Second Meeting are included in the Meeting section and *Appendices 2 to 4*.

### 4. Sale of business and assets

The Administrators have commenced a sale campaign for the Company's businesses. At the date of this report:

- we received 19 expressions of interest as follows:
  - Pink Lily Sands – 17
  - Metal Accessories – 2
- offers are due to be submitted by the following deadlines:
  - Pink Lily Sands – 23 November 2018
  - Metal Accessories – 9 November 2018.
- no offers have been received for the other business units, including Metal Accessories. We are continuing to liaise with the interested parties.

The Administrators have commenced the process of realising the other Company's assets:

- Hangar lease at Rockhampton airport – 2 expressions of interest received and we are continuing to liaise with these parties
- Plant and equipment (including motor vehicles) not included in the sale campaign – expressions of interests received and we will consider auctioning the assets in due course
- Cessna aircraft – currently grounded due to maintenance issues. We are engaging a valuer to assess its realisable value and determine the appropriate method of sale
- Real properties – currently seeking marketing submissions from agents



## *At a glance*

### **5. Progress of administration**

To date, we have completed, among other things, the following tasks:

- secured all assets of the Company, including those on various job sites
- reviewed all work in progress and contracts on foot
- traded Pink Lily Sands
- commenced a parallel campaign for sale of the Company's businesses and assets
- liaised with QBCC regarding proposed cancellation of the builder licence
- continued to pursue debtor collections, including recovery of bank guarantees
- continued to deal with numerous subcontractors' claims
- dealt with PPSR claims, including issuing notices of Administrators' intention not to exercise property rights
- liaised with key stakeholders, including employees, customers, suppliers, Secured Creditors and trade creditors regarding the status of the administration
- liaised with FEG regarding outstanding employee entitlements and claims process by employees
- liaised with employees regarding their entitlement calculations
- liaised with the ATO regarding GST, PAYG and SGC as well as reporting during the administration period

- liaised with insurer regarding ongoing insurance requirements and pre-appointment insurance refunds
- convened and held the First Meeting
- reviewed books and records of the Company
- undertaken preliminary investigations into the affairs of the Company pursuant to Section 438A of the Act, including investigating:
  - the financial position of the Company
  - possible voidable transactions recoverable by a liquidator
  - the actions of the Company's Director.
- complied with our statutory duties.

## At a glance

### 6. Investigations

Our preliminary investigations have indicated:

- JM Kelly Group intercompany loans - significant intercompany loans are owing within JM Kelly Group. Demands have been issued to the companies not in external administration totalling \$8.6m (\$3.91m relates to the Company).
- JM Kelly Group treasury function - JMK Management provided a treasury function on behalf of JM Kelly Group, meaning that all receipts and payments were processed through this company by way of intercompany loans (43,000 transactions recorded for the last 12 months on behalf of 13 group companies). We identified that the Company's receipts were used to pay other companies' creditors.
- QBCC - a number of factors require further investigation in relation to the MFR reports submitted to the QBCC, including:
  - security in relation to a debt facility provided and guaranteed by the Company
  - intercompany loan transactions occurring during the period
  - collectability of the related party loans
  - values adopted in calculating the current ratio and the NTA.

Each of the above items impacts the calculation of the Company's current ratio and the NTA, which is a condition of the licensing requirements.

- Progress claims (statutory declarations) - a number of creditors have been identified as not being paid, despite stating otherwise in the statutory declarations.

We are continuing with our analysis of all statutory declarations. Should we have sufficient evidence supporting this matter, we will report this offence to the relevant authorities.

- Project Builders - further investigations are ongoing in relation to Project Builders' creditors' claims in the administration of the Company
- Insolvent trading - the director may have traded the Company whilst insolvent from around January 2017.

If it proceeds to liquidation, as Liquidators, we will conduct more detailed investigations to pinpoint the date of insolvency.

- Voidable transactions - investigation in relation to any voidable transactions is ongoing.
- Directors duties - the director may have breached directors' duties.

## *At a glance*

### **7. Estimated return to creditors**

We are not in a position to provide an estimated return to creditors for the following reasons:

- the current stage of the assets/business sale campaign where asset values are withheld as they are commercially sensitive
- recoverability of circulating assets, particularly debtors, which are subject to liquidated damages claims
- recoverability of the intercompany loans from companies not in external administration is unknown
- prospect of pursuing insolvent trading claim and any avoidable transaction for the benefit of creditors is unknown
- the amount owed to the secured creditor and the order of payment of priority made from the companies in the group.

If it proceeds to liquidation, as Liquidators, we will update creditors once an estimate is possible.

### **8. Administrators' opinion**

It is our opinion that creditors' interests are best served by the Company being wound up (i.e. placed into liquidation) for the following reasons:

- no DOCA has been received to date, therefore this option is not available
- the Company is insolvent and therefore we do not consider it to be in the Creditors' interest that the administration end and the Company be returned to the director
- winding up of the Company is the most viable option for creditors.

The Statement of Administrators' Opinion is attached in *Appendix 1*.

## *At a glance*

### **9. Enquiries**

We ask creditors to submit questions they would like addressed at the Second Meeting by email to [creditorsjmk@au.pwc.com](mailto:creditorsjmk@au.pwc.com) no later than 4.00pm on Tuesday, 20 November 2018. Whilst we make every effort to address questions submitted, we reserve the right to exclude questions to avoid compromising creditors' interests or due to time constraints.

We will address all material matters that come to our attention after the date of this Report at the Second Meeting. Should any significant information affecting the creditors' decision regarding the future of the Company become known, we shall endeavour to advise creditors prior to the Second Meeting by posting such information on PwC's website at <https://www.pwc.com.au/business-restructuring.html>.

# *Background*

	<b>Background</b>	<b>13</b>
1	Administrators' independence	14
2	Purpose of the appointment and Second Report	16
3	First Meeting	17
4	Statutory information	18
5	Company and business background	20
6	Events leading to our appointment	21
7	Reasons for failure	23

## ***Administrators' independence***

### **Background to independence**

The conduct of insolvency professionals is governed by the Act and by the standards set by ARITA.

The Act requires that a person appointed as Administrator of a company must be a registered Liquidator and must not be a significant debtor or creditor, officer, auditor or partner or employee of an officer or auditor of the Company.

The ARITA's COPP states that the overriding qualifications of persons appointed as Administrators are that they are, and are seen to be, independent and that they have the necessary expertise to deal effectively and efficiently with a company.

### **The rationale for independence**

Independence is critical because of the nature of the role of the Administrator. Tasks such as adjudicating on complex and competing interests, preserving and selling assets and investigating and pursuing claims require a high degree of objectivity and impartiality.

Stakeholders are entitled to have confidence in the Administrator's conduct and decision making processes. They need to be able to regard the Administrator as fair, unbiased and not acting from self interest when exercising their professional and commercial judgment.

### **The test of independence**

As set out in the COPP, there are two aspects to independence.

An insolvency practitioner must:

- be independent in fact
- be seen or perceived to be independent.

An insolvency practitioner must be independent in fact, that is, they should act and conduct the administration in an independent manner.

An insolvency practitioner must be seen to be independent, that is, they must not accept an appointment, or continue to act under an existing appointment, if:

- a reasonable and informed third party
- on the information available (or which should have been available) at the time might reasonably form the opinion that the Administrator might not bring an independent mind to the administration and thus may not be impartial or may in fact act with bias
- because of a lack of independence, or a perception of a lack of independence.

## ***Administrators' Independence***

### **Declaration of Independence, Relevant Relationships and Indemnities**

A copy of our DIRRI is attached in *Appendix 5*, as provided with our first circular to creditors and tabled at the First Meeting.

We do not believe that the relationships noted in the DIRRI compromises our independence, nor our ability to act as Administrators of the Company in an impartial and objective manner.

Our assessment regarding our independence and the relevant relationships disclosed in the DIRRI has not changed since the time of our appointment.

### **Compliance with qualifications to act as Administrators**

With reference to the Act, we confirm that we are:

- Registered Liquidators
- not disqualified to act as Administrators.

With reference to the COPP, we confirm that we are:

- Members of the ARITA
- have adhered to, and intend to adhere to, the guidelines set out in the COPP with respect to the acceptance of our appointment as Administrators of the Company, and in our continuing role as Administrators of the Company, and Liquidators if so appointed.

## ***Purpose of the appointment and Second Report***

### **Purpose of the appointment**

The primary objective of an administration is to administer the business, property, and affairs of a company in a way that:

- maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- if it is not possible for the company or its business to continue in existence – results in a better return for the company's creditors and members than it would result from an immediate winding up of the company.

The Act places various reporting requirements upon an administrator. These requirements include:

- preparing a report to creditors, which provides creditors with information regarding the company's business, property, affairs, and financial circumstances to enable creditors to make an informed decision as to the future of the company
- providing a statement, setting out the Administrators' opinion and reasoning as to which course of action available is in the best interests of creditors
- specifying whether there are any voidable transactions that may be recoverable by a liquidator.

### **Purpose of the Second Report**

The Second Report is based upon our investigations to date. Any additional issues we identify after the Second Report may be the subject of a further written report posted on PwC's website and /or tabled at the Second Meeting.

Our opinion regarding the future of the Company is set out in *Appendix 1*.

**In summary, our opinion is that the Company is insolvent and our recommendation is that it should be wound up at the Second Meeting.**



## ***First Meeting***

### **First meeting**

The First Meeting, convened under section 436E of the Act, was held on 29 October 2018.

At the meeting;

- A poll was called to vote for replacing the Administrators of the Company. The resolution did not pass and therefore, we remained as Administrators.
- A COI was elected, which is made up of the following members:

<b>Nominee</b>	<b>Creditor</b>
<b>Mark Ramage</b>	Ramage Concreting Australia
<b>Peter Hunt</b>	Thinkwater Rockhampton
<b>Mike Vadasz</b>	Australasian Piling Company

Minutes of the First Meeting can be obtained from ASIC ([www.asic.gov.au](http://www.asic.gov.au)).

### **COI meeting**

We held a COI meeting on 9 November 2018 to provide an update to the COI members on the progress of the administration, including:

- the sale of the businesses and associated assets
- Administrators' preliminary investigations.

No resolution was put to the COI meeting.

## Statutory information

### Introduction

The information contained in this section has been extracted from ASIC records as at 17 October 2018.

### Incorporation

The Company was originally registered in the name of John M. Kelly (Builders) Pty Ltd on 5 August 1969 and changed to its current name on 31 October 1990.

### Registered office and principal place of business

The registered office and principal place of business of the Company are both located at 212 Richardson Road, Park Avenue QLD 4701.

### Shareholders

The following shares have been issued for \$1 per share (fully paid up):

Class	Number	Shareholder
<b>A</b>	6	<ul style="list-style-type: none"> <li>Anncorp Pty Ltd</li> <li>Noreen Therese Murphy</li> <li>G.J. Murphy Holdings Pty Ltd</li> </ul>
<b>B</b>	900	<ul style="list-style-type: none"> <li>Noreen Therese Murphy</li> <li>GJ Murphy Family Trust</li> <li>Anncorp Pty Ltd</li> <li>Noreen Therese Murphy</li> <li>G.J. Murphy Holdings Pty Ltd</li> </ul>
<b>C</b>	900	<ul style="list-style-type: none"> <li>Noreen Therese Murphy</li> <li>GJ Murphy Family Trust</li> <li>Anncorp Pty Ltd</li> <li>Noreen Therese Murphy</li> <li>G.J. Murphy Holdings Pty Ltd</li> </ul>
<b>D</b>	2,700	<ul style="list-style-type: none"> <li>Noreen Therese Murphy</li> <li>GJ Murphy Family Trust</li> <li>Anncorp Pty Ltd</li> <li>Noreen Therese Murphy</li> <li>G.J. Murphy Holdings Pty Ltd</li> </ul>
<b>Total</b>	4,506	

## Statutory information

### Officers

The current and historical Directors' and Secretaries are:

Position	Name
<b>Director</b>	John Geoffrey Murphy
<b>Previous directors</b>	<ul style="list-style-type: none"> <li>Geoffrey John Joseph Murphy (ceased on 7 July 2016)</li> <li>John Geoffrey Murphy (ceased on 5 September 2003)</li> </ul>
<b>Secretary</b>	John Geoffrey Murphy
<b>Auditor</b>	None

### Registered charges

The PPSR charges over the Company comprises:

- 56 registered interests
- 44 creditors

A summary outlining the PPSR creditors of the Company as at the date of our appointment is enclosed in *Appendix 6*.

Refer to the Summary of RATA section for details on how the registrations have been dealt with since our appointment.

## **Company and business background**

### **Corporate structure**

The Company is part of the JM Kelly Group, a family-owned business that was established in 1961. JM Kelly Group's core business is construction, which is augmented by business units encompassing building services, manufacturing and building supplies.

As at our appointment, the JM Kelly Group employed approximately 230 employees across different business units, including approximately 40 apprentices.

Of the 230 employees, the Company employed 36 employees and was the main construction business.

Each company in the JM Kelly Group had a distinct purpose and separate business units. We also note that the administration functions for the JM Kelly Group were undertaken by JMK Management.

Please refer to *Appendix 7* for a diagram of JM Kelly Group corporate structure.

On the same day, we were also appointed as Administrator or Liquidator of the following JM Kelly Group companies:

- Kawana Joinery Co. Pty Ltd (Administrators Appointed)
- Burns & Twigg Pty Ltd (In Liquidation)
- Central Queensland Investments Pty Ltd (In Liquidation)
- JM Kelly Management Pty Ltd (In Liquidation)
- BPM Cowlrick Pty Ltd (In Liquidation)
- Central Electrics (Contracting) Pty Ltd (In Liquidation)

- CQ Construction Management Pty Ltd (In Liquidation)
- Fitzroy Industries Pty Ltd (In Liquidation)
- Cajun Pty Ltd (In Liquidation).

### **Business background**

The Company operated four business units:

- J M Kelly Builders – main construction business.
- Pink Lily Sands – a river sand dredging operation extracting a range of products from the Fitzroy River.
- Metal Accessories – sheet metal fabrication, including air-conditioning ductwork, door frames and flashings. Metal Accessories can design, construct and manufacture to its customers needs.
- CQ Plumbing – supply and installation of plumbing and drainage, including design, asbestos removal and installation of gas (excluding medical gas).

The Company held a builder licence issued by QBCC to operate the above businesses (excluding Pink Lily Sands). On 23 October 2018, QBCC issued a notice to suspend or cancel the licence of the Company within 28 days for the following reasons:

- the Company was placed into Voluntary Administration
- the Company was an excluded company under the QBCC Act.

The Administrators have commenced an urgent sale campaign for the businesses. This is discussed further in the Strategy Section.

***Events leading to our appointment***

Below is a detailed timeline for the period June 2016 to our appointment, which was provided by the director.

<b>Date</b>	<b>Event</b>
<b>20 June 2016</b>	Project Builders was placed into liquidation. Kelly-Anne Trenfield and John Park of FTI Consulting were appointed as Liquidators of Project Builders.
<b>27 June 2016</b>	John Murphy was appointed as director of the Company and the other J M Kelly Group companies with QBCC licences.
<b>27 June 2016</b>	QBCC agreed that John Murphy as director of the Company was not an excluded individual.
<b>7 July 2016</b>	Geoff Murphy resigned as director of the Company.
<b>July 2016</b>	QBCC altered its position and issued notices of reasons for proposed cancellation of QBCC licences against the Company and the other companies in J M Kelly Group. The Company filed review applications in QCAT to have those notices set aside. It allowed the QBCC proposed cancellation notices to be stayed. A hearing was set down for February 2017.
<b>February 2017</b>	The QCAT hearing was adjourned until August 2017.
<b>August 2017</b>	The adjourned QCAT hearing was further adjourned until February 2018.
<b>15 February 2018</b>	The Company received a letter from BAS, advising that BAS was proposing not to consider the Company for any BAS projects unless and until QCAT determined that the Director was not an excluded individual and the Company was not an excluded company. BAS called for any submissions to be considered before making the proposed decision within 14 days.
<b>26 February 2018</b>	The QCAT proceeding went to trial and proceeded until 2 March 2018.
<b>28 February 2018</b>	The Company sent a letter to BAS providing submissions as to why BAS should not exclude the Company from BAS' tenders as proposed.

***Events leading to our appointment***

<b>Date</b>	<b>Event</b>
<b>2 March 2018</b>	The QCAT proceeding was adjourned until 11 June 2018.
<b>13 March 2018</b>	The Company received a letter from BAS confirming that BAS had made the decision not to consider the Company for BAS projects unless and until QCAT determined the Director was not an excluded individual and the Company was not an excluded company.
<b>5 April 2018</b>	The Company sent a letter to BAS advising that the QCAT proceedings were not likely to be determined for some months after June 2018 and therefore, the Company should be considered for at least short-term BAS projects.
<b>13 April 2018</b>	The Company lodged a RTI Application seeking information with respect to BAS' decision.
<b>26 April 2018</b>	The Company sent a follow up letter to BAS regarding the letter dated 5 April 2018.
<b>4 May 2018</b>	The Company received a letter from BAS confirming that BAS was not required to re-consider its decision and declined to do so.
<b>11 June 2018</b>	The QCAT proceeding recommenced and was adjourned to 22 June 2018 for closing submissions.
<b>22 June 2018</b>	The QCAT proceeding recommenced for closing submissions and QCAT's decision was to be handed down in due course.
<b>5 August 2018</b>	The Company received a copy of the documents in response to the RTI Application. From review of the documents, the Director learnt that BAS' decision had already been made in August 2017 based on the advice provided by QBCC that the Director was unfit to undertake business.
<b>9 October 2018</b>	QCAT handed down its decision and set aside the QBCC notices from June 2016. QBCC decided that the Director was not an excluded individual and the Company was not an excluded company.
<b>9 to 16 October 2018</b>	The Director considered the appointment of Voluntary Administrators as the Company was likely to be insolvent.
<b>17 October 2018</b>	The Director resolved that the Company be placed into Voluntary Administration and appointed Derrick Vickers and Michael Owen of PwC as Voluntary Administrators.

## ***Reasons for failure***

### **Director's explanation**

The Director has advised that the key factors contributing to the failure of the Company are as follows:

- the QCAT proceeding initiated by QBCC for cancellation of QBCC licences against the Company
- the Company was precluded from tendering for BAS projects since July 2016 as a result of the QCAT proceeding, which had a significant impact on the financial position and operation of the Company
- significant cost of defending in the QCAT proceeding.

### **Administrators' comments**

We make the following observations about the director's explanation:

- whilst BAS had traditionally been a source of work for the Company, it was not the only source
- we are unable to comment on whether the Company would have been successful when tendering for new work with BAS, even if it had the ability to do so.

We are also of the view that the following factors contributed:

- the JM Kelly Group treasury function was managed by one company, JMK Management, where:
  - all revenue generated by the Company was forwarded to JMK Management, with the intercompany loan being increased
  - liabilities incurred by the Company were paid by JMK Management, with the intercompany loan being decreased

- cash received by JMK Management were comingled and may have been used to fund loss making business units and /or non-cash generating companies within JM Kelly Group
- in support of the contention above, at the date of appointment, the Company was owed:
  - \$2.06m by JMK Management
  - \$3.91m by GJ Murphy Holdings Pty Ltd (a related company within JM Kelly Group).

# *Strategy*

<b>Strategy</b>	<b>24</b>
8      Trading decisions	25
9      Actions taken by the Administrators	26



## Trading decisions

### Background

The Act sets out the objective of Voluntary Administration, which is to maximise the chances of the company, or as much as possible of its business, continuing in existence.

Should this not be possible, the objective of the Act is to provide a better return to creditors than it would result from an immediate winding up of the company.

Our immediate strategic priority was to:

- review the viability of each business unit to continue trading during a business sale campaign
- assess whether there was sufficient working capital within the Company to fund the trading of the business units during the administration period
- undertake an urgent sale campaign for the businesses
- secure the co-operation of the workforce to enable continued trading
- engage with FEG and other government departments to provide assistance to terminated employees
- engage with QBCC in relation to the builder licence held by the Company
- settle liabilities incurred during the administration trading period.

### Decision to trade

On 23 October 2018, QBCC issued a notice to suspend or cancel the licence of the Company within 28 days for the following reasons:

- the Company was placed into Voluntary Administration
- the Company was an excluded company under the QBCC Act.

Given the circumstances, the Administrators were of the view that it was not viable to trade 3 business units (i.e. JM Kelly Builders, Metal Accessories and CQ Plumbing). The Administrators made a decision to continue trading Pink Lily Sands for the following reasons:

- Pink Lily Sands generates positive cash flow
- it does not require the builder licence
- at appointment, it had sufficient stock on hand (i.e. river sand) to continue trading for 2 weeks until dredging would be required
- it required minimal workforce and costs (relative to the other business units).

The Administrators commenced an urgent parallel sale campaign in relation to the Company's business units, which is discussed further in the next section.

## ***Actions taken by the Administrators***

### **Identifying and Securing of Assets**

At the time of our appointment, we were advised of various project sites of the Company and were provided various asset schedules.

We organised our agents to attend all advised sites, inspect relevant assets and collect assets. We have been continuing to work with relevant parties regarding each of the project sites including to facilitate securing of any remaining Company property and to transition to a new builder for completion of projects and minimise costs to the Company.

As the administration has progressed, we have become aware of other assets of the Company and secured these. A summary of our findings to date include:

- 26 assets not listed in the Company's asset register but listed in other related entities' asset registers. Subsequently confirmed with the Company's asset manager that these were assets of the Company. These items have been secured.
- 11 assets on asset register were missing and required investigation to track down items. These items located and secured.
- 1 asset not included on the Company's or any of the related entity's asset registers but confirmed to be the Company's and has been secured.
- 2 vehicles on the asset register were recorded with incorrect registrations, with these registrations having been changed and not reflected on the asset register.
- 1 vehicle recorded on the asset register but was sold in 2015.

- 3 vehicles were dropped off at the Company's premises after our appointment with no information.

At the Company's head office at Richardson Road, there were a number of business units and related companies also trading from this property. This has led to significant time being required in identifying assets and determining which entity owns the particular asset. There is also a significant volume of items scattered throughout the large property accumulated over many years with many items stored at the property by former employees.

## ***Actions taken by the Administrators***

### **Administrators' sale campaign - businesses**

The Administrators immediately undertook a sale campaign in relation to the Company's businesses, which is summarised below:

- advertised in the Courier Mail and Rockhampton Bulletin on 23 October 2018
- expressions of interest received:
  - Pink Lily Sands – 17
  - Metal Accessories – 2
- distributed expression of interest forms and confidentiality deeds to interested parties, and requested expressions of interest
- signed expression of interest forms:
  - Pink Lily Sands – 8
  - Metal Accessories – 2
- distributed information memorandums, including relevant company and business information, to the interested parties
- due date for offers:
  - Pink Lily Sands – 23 November 2018
  - Metal Accessories – 9 November 2018.

At the date of this report, no offers have been received for the other business units (including Metal Accessories). We are continuing to liaise with the interested parties and providing relevant information in order for offers to be made.

### **Other assets**

The Company also has the following assets:

- hangar lease at Rockhampton Airport:
  - expressions of interest received – 2
  - currently seeking offers from these parties
- plant and equipment / motor vehicles not utilised in the businesses:
  - expressions of interest received
  - our agents have dealt with all offers and provided recommendations as to the value of the items and the value likely to be achieved at auction
  - based on the advice provided, we have accepted a number of offers for specific assets
  - we will continue to deal with any offers received on the same basis
  - any remaining plant and equipment will be sold at auction in due course.
- Cessna 310R aircraft
  - the aircraft is currently stored at the Company's hangar
  - we are advised that various services are required for the aircraft and due to these not being completed, the aircraft is currently grounded.
  - upon receipt of the maintenance records, our agents will assess its realisable value and advise on the appropriate method of sale.

### ***Actions taken by the Administrators***

- real properties:
  - 205 Pink Lily Road, Pink Lily:
    - may be sold with the Pink Lily business.
    - if not, we will seek submissions from agents and put the property to market.
  - 65 John Street, Yeppoon
    - the property is a vacant block and has been listed for about 12 months.
    - we are currently seeking marketing submissions from agents and a valuation of the property.

We note that all asset values have been withheld from the Report, as they are commercially sensitive.

## ***Actions taken by the Administrators***

### **Progress of administration**

To date, we have completed, among other things, the following tasks:

- secured all assets of the Company, including those on various job sites
- reviewed all work in progress and contracts on foot
- traded Pink Lily Sands
- commenced a parallel campaign for sale of the Company's businesses and assets
- liaised with QBCC regarding proposed cancellation of the builder licence
- continued to pursue debtor collections, including recovery of bank guarantees
- continued to deal with numerous subcontractors' claims
- dealt with PPSR claims, including issuing notices of Administrators' intention not to exercise property rights
- liaised with key stakeholders, including employees, customers, suppliers, Secured Creditors and trade creditors regarding the status of the administration
- liaised with FEG regarding outstanding employee entitlements and claims process by employees
- liaised with employees regarding their entitlement calculations
- liaised with the ATO regarding GST, PAYG and SGC as well as reporting during the administration period

- liaised with insurer regarding ongoing insurance requirements and pre-appointment insurance refunds
- convened and held the First Meeting
- reviewed books and records of the Company
- undertaken preliminary investigations into the affairs of the Company pursuant to Section 438A of the Act, including investigating:
  - the financial position of the Company
  - possible voidable transactions recoverable by a liquidator
  - the actions of the Company's Director.
- complied with our statutory duties.

## ***Actions taken by the Administrators***    **Impact on employees**

As a result of our decision not to trade three businesses, we terminated the employment of 31 employees.

For Pink Lily Sands, we continue to employ 5 employees. It is expected that employment of these employees will continue until a successful sale of the business is achieved.

In respect of the terminated employees, we have issued a letter outlining their entitlements calculated based on the Company's books and records.

Employees will not be able to claim their entitlements through FEG until the Company is placed into liquidation.

Refer to the Summary of RATA Section for details of the outstanding employee entitlements.

# *Report as to Affairs*

	<b>Report as to Affairs</b>	<b>31</b>
10	Summary of RATA	32

## Summary of RATA

A director of a company is required to submit a RATA to the Administrators pursuant to Section 438B of the Act. A summary of the RATA provided as at 17 October 2018 is below:

<b>RATA Summary</b>	<b>Notes</b>	<b>RATA book value (\$)</b>	<b>Estimated Realisable Value (ERV) (\$)</b>
<i>Assets</i>			
Interest in land	1	3,650,000	Withheld
Sundry debtors	2	3,322,358	Unknown
Intercompany loan receivables	3	-	Unknown
Cash on hand and at bank	4	3,041,098	-
Stock	5	183,790	Withheld
Work in progress	6	150,710	Withheld
Plant and equipment	7	1,744,264	Withheld
Other assets	8	85,837	Unknown
<b>Subtotal</b>		<b>12,178,057</b>	<b>Unknown</b>
Assets subject to specific charges	9	120,000	Withheld
Less: amounts owing		(36,590)	(36,590)
Add: contingent assets		-	-
<b>Total assets</b>		<b>12,261,467</b>	<b>Unknown</b>
<i>Less liabilities</i>			
Employee entitlements	10	(222,019)	(1,033,981)
Secured creditors	11	-	(9,198,050)
Partly secured creditors	12	-	Unknown
Unsecured creditors	13	(7,467,855)	(11,153,432)
Contingent liabilities		-	-
<b>Total liabilities</b>		<b>(7,689,874)</b>	<b>Unknown</b>
<b>Net assets / (liabilities)</b>		<b>4,571,593</b>	<b>Unknown</b>

### Key notes:

- Withheld – it is included in the Administrators' sale campaign and therefore, the ERV is commercially sensitive.
- Unknown – it is subject to ongoing or further investigation.
- Further details on the Administrators sale campaign is included in the Actions taken by Administrators Section.

## Notes:

1. The RATA discloses interest in land totalling \$3.65m, relating to:
  - a) Land and buildings at 205 Pink Lily Road, Pink Lily Qld 4702
  - b) Vacant land at 65 John Street, Yeppoon QLD 4702

The ERV is commercially sensitive and is therefore withheld from the Second Report.
2. The RATA discloses trade debtors totalling \$3.3m. The debtors are subject to subcontractor charges and liquidated damages claims. We are unable to comment on the amount collectible.

3. The RATA does not include any intercompany receivables totalling approximately \$5.97m as at October 2018 as outlined below:

<b>Intercompany debtor</b>	<b>Amount (\$)</b>	<b>Administrators' comments</b>
J M Kelly Management Pty Ltd	2,064,488	Company in liquidation
GJ Murphy Holdings Pty Ltd	3,907,098	We have written a letter demanding full payment of the loan.
<b>Total</b>	<b>5,971,556</b>	

4. This relates to a term deposit supporting approximately 34 bank guarantees issued for the purpose of retention monies for contract works undertaken by the Company. At our appointment, the issued bank guarantees total \$3.39m. The secured creditor has offset the term deposit against the bank guarantees.



**Summary  
of RATA**

- 19 of the bank guarantees relate to projects that have reached practical completion, with the defect liability period end date ranging from 30 September 2018 to 8 November 2019. The defect liability period runs for 12 months from practical completion.

We are liaising with the relevant parties for a return of the bank guarantees for projects that have passed the defect liability period.

- 15 of the bank guarantees relate to projects that have not been completed. Due to unfinished works, we anticipate a claim being made on the bank guarantees.

We are presently reviewing individual project files to determine whether or not the bank guarantees can be returned and therefore, the funds released. This includes assessing if there were any outstanding defect works and the status of the unfinished projects.

5. The stock consists of building materials used in the general course of the Company's four business units. A portion of the stock is subject to retention of title claims with the balance subject to the sale process.
6. Work in Progress relates to projects started by each of the four business units at various stages of completion, which is subject to the sale process.
7. The Company owns plant and equipment including motor vehicles, aircraft, hangar, machinery and other equipment, which are subject to the Administrators' sale campaign and the ERV is therefore withheld from the Second Report.
8. Other assets totalling \$85k include:

Description	Amount (\$)	Administrators' comments
Security deposits	6,655	Continuing to pursue
Deposits held	2,000	Continuing to pursue
Bonds – rented properties	7,882	No recovery expected due to damages under the lease agreements
Prepayments	69,300	Our enquiries are continuing in relation to recovery
<b>Total</b>	<b>85,837</b>	

9. The RATA discloses assets subject to specific charges of \$120k relating to a Triple Deck Screen. This equipment is subject to PPSR and the sale campaign. ERV is therefore withheld from the Second Report.

10. The RATA discloses employee entitlements in respect of wages and annual leave totalling \$222k. We have calculated the total entitlements owed to the employees as at the date of our appointment, which is summarised as follows:

Entitlement	RATA (\$)	ERV (\$)
Superannuation	-	169,688
Wages	26,064	41,171
Annual Leave	195,955	195,955
Long Service Leave	-	219,308
Pay in lieu of notice	-	125,880
Redundancy	-	281,976
<b>Total</b>	<b>222,019</b>	<b>1,033,978</b>

The employee entitlements are subject to change due to:

- the appropriate industrial instrument (ie. Enterprise Agreement, Employment Contract, Award or NES) being applied

## Summary of RATA

- additional claims received for wages, superannuation and other entitlements.
- calculation of interest and administration charges in respect of outstanding superannuation.

Claims of arrears of wages/salaries, superannuation, outstanding holiday pay, pay in lieu of notice and redundancy pay are given priority treatments under Sections 556(1) and 561 of the Act.

To the extent that the Company is unable to pay all entitlements, employees may be eligible to lodge a claim for unpaid entitlements through FEG scheme, which is administered by the Department of Jobs and Small Business. The scheme is only available if the Company is wound up at the Second Meeting. Also refer to the Estimated Return to Creditors Section.

11. The RATA does not list the debt owing to NAB. NAB holds a first ranking GSA over all present and after acquired property. All realisations (net of costs and priority claims (employees)) over circulating assets are payable to NAB under its security. A summary of JM Kelly Group's debt owing to NAB is below:

Company	Indebtedness as borrower (\$)	Indebtedness as Guarantor (\$)	Total owed to NAB (\$)
J M Kelly Builders Pty Ltd (Administrators Appointed)	3,292,161	5,905,889	9,198,050
Kawana Joinery Co. Pty Ltd (Administrators Appointed)	-	9,198,050	9,198,050
J.M. Kelly Management Pty Ltd (In Liquidation)	50,541	9,147,509	9,198,050
BPM Cowlrick Pty Ltd (In Liquidation)	-	9,198,050	9,198,050
Burns & Twigg Pty Ltd (In Liquidation)	-	9,198,050	9,198,050
C.Q. Construction Management Pty Ltd (In Liquidation)	-	9,198,050	9,198,050
Cajun Pty Ltd (In Liquidation)	196,874	9,001,176	9,198,050
Central Electrics (Contracting) Pty Ltd (In Liquidation)	-	9,198,050	9,198,050
Central Queensland Investments Pty Ltd (In Liquidation)	-	9,198,050	9,198,050
Fitzroy Industries Pty Ltd (In Liquidation)	-	9,198,050	9,198,050
JM Kelly Group companies - Not Externally Administered*	5,658,474	3,539,576	9,198,050

\* As we are not appointed to these companies, we do not have the breakdown by company.

12. The Company had 56 PPSR registrations at our appointment, which have been dealt with as follows:

- 15 registrations – discharged
- 39 registrations – Form 509B – Notice of Administrators' Intention Not to Exercise Property Rights issued
- 1 registration – invalid and therefore assets vest in the Company
- 1 registration – valid and we continue to use the equipment for trading

We are continuing to investigate the validity of 40 registrations to determine whether or not the assets vest in the Company.

13. Unsecured creditors are summarised below:

RATA		Adjusted for claims received to date	
Number	Amount (\$)	Number	Amount (\$)
Not provided	7,467,855	397	11,153,432

The difference is a result of additional claims received for damages due to unfinished works, subcontractors charges and potential liabilities pursuant to assignment of contracts from Project Builders (not recorded in the Company's books and records).

The claims have not been adjudicated upon for dividend purposes.

# *Investigations*

	<b>Investigations</b>	<b>35</b>
11	Overview	36
12	Reporting to Regulators	37
13	Public examinations	38
14	JM Kelly Group intercompany loans	40
15	QBCC	42
16	Progress claims	43
17	Project Builders	44
18	Books and Records	45
19	Timing of insolvency and insolvent trading	46
20	Voidable transactions	49
21	Directors' duties	52
22	Other investigations	53

## Overview

### Background

We have made enquiries into the financial affairs of the Company. The investigations we have undertaken are only indicative of the actions that may be possible in the event of a liquidation.

A Liquidator of a company has the power to pursue certain transactions that took place prior to the date of liquidation with a view to enhancing the pool of funds available to the Creditors. It is important to note that these actions can only be pursued in the event that Creditors resolve to wind the company up and a Liquidator is appointed. Creditors should note that these actions may become expensive due to the time costs incurred in thoroughly investigating all aspects of potential claims and obtaining legal advice on the merits of the claims. In some cases, Court intervention is necessary to enforce recoveries, which adds to the length of time and costs to pursue the claims.

Where Liquidators do not have funds available to pursue recovery actions, or where they do not consider it commercial or in the best interests of Creditors to pursue an action, Creditors prepared to fund such action may choose to do so. Creditors providing such funding should, if sufficient moneys are recovered from the action, be entitled to receive the amount of their contribution in priority to other Creditors.

Alternatively, actions may be funded by litigation insurance, which is effectively a fund provided by a third party insurer/funder rather than by a creditor of the company. Litigation insurance tends to be available only for cases where legal advice indicates that the potential success of an action is very strong and outweighs the expense involved.

Certain defences may be available in relation to these claims and creditors should also consider the financial capacity of defendants and their ability to settle any established insolvent trading claim.

The key areas being commented on include:

- JM Kelly Group intercompany loans
- QBCC
- Progress claims
- Project Builders
- Books and records
- Insolvency
- Insolvent trading
- Unfair preferences
- Uncommercial and insolvent transactions
- Unfair loans
- Unreasonable director related transactions
- Directors duties.

## ***Reporting to authorities***

### **ASIC**

The Administrators are in the process of compiling information and preparing a report to the ASIC. In accordance with Section 533 of the Act, a Liquidator must report to the ASIC, during the course of a winding up, if it appears to the Liquidator that a past or present officer or employee of a company may have been guilty of an offence. Upon providing such a report, a Liquidator is also required to give the ASIC such information that the ASIC may require to allow it to investigate the possible offence. That process will be advanced by a Liquidator during the course of the liquidation.

On delivery of a report (or of its own volition), the ASIC has broad investigative powers including to require persons to attend for an examination and to allow the inspection of books and records. That process may be separate to or as part of Public Examinations conducted by a Liquidator. The ASIC has the power to prosecute any offence that arises as a result of the investigation and all necessary cooperation will be provided to the ASIC by the Liquidators (if the Company is wound up).

### **AFP and QPS**

The Administrators' preliminary investigations have indicated a number of matters that require further investigation.

If it appears that a criminal offence has been committed based on our investigations (including a public examination), a Liquidator, if appointed, will report such offences to the AFP and/or the QPS.

## **Public examinations**    **Public examinations**

If the company is wound up it is our intention to undertake a public examination to further the investigations which may result in further recoveries for the benefit of creditors.

A Public Examination is a part of the investigation tools held by a Liquidator. The Act provides that a Liquidator is entitled to issue certain notices (under 596A and 596B of the Act) which have the same effect as summonses to produce documents and to appear to give evidence on oath.

Public Examinations are conducted in either a Federal Court or a State Magistrates Court. Liquidators can compel directors and third parties to produce documents and to appear to give evidence on oath before a magistrate or a Federal Court judge.

The reasons why a Liquidator would seek to examine someone include:

- that a Liquidator is able to compel answers to questions on oath in order to give the answers greater veracity;
- the Liquidator may want to have the answers on oath and recorded in court transcript to be used as evidence in further proceedings against the examiner or some other person;
- where there may be grounds for taking proceedings against officers, managers or others involved with the company during its life.

A Public Examination by its very nature is an inquisitorial proceeding. It allows Liquidators to investigate and inquire in a manner that is not otherwise available in an Administration. Questioning during the examination is not limited to a particular matter, questions can be wide ranging provided they are relevant to the "examinable affairs" of the company.

The ambit power to examine is broad. And the range of questions that can be put to an examinee is very wide. The definition of "examinable affairs" is defined to mean:

- the promotion, formation, management, administration or winding up of the corporation;
- any other affairs of the corporation; or
- the business affairs of the connected entity of the corporation in so far as they are relevant to the corporation or to anything included in its examinable affairs.

The *affairs* of a company include the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or persons and including property held as agent, bailee or trustee) liabilities, profits and other income receipts, losses, outgoings and expenditure of the company.

## **Public examinations**

Public Examinations can also be conducted in respect of any third parties who have information which may be relevant to the affairs of the company. That would include any individuals or companies who had dealings with the Company and may have information which is relevant to potential causes of action available to Liquidators including breach of directors' duties, uncommercial transactions, unfair preferences and any other cause of action available to a company.

Public Examinations are recorded as part of a transcript of the examination which goes to support potential causes of action which may be brought by a Liquidator.

### **Public Examinations are conducted in order to allow a Liquidator the benefit of determining whether:**

- **a cause of action exists;**
- **whether potential counterparty to that cause of action has sufficient means to meet any judgment if such a cause of action was successful;**
- **to test any defences which may be available to those counterparties including directors.**

The cost of Public Examinations is funded from the assets of the company or it is also possible that there would be litigation funding available in order to conduct the Public Examinations and any subsequent proceedings. The cost of litigation funding varies but can be anywhere from 25 to 45% of any recovery as a result of actions taken following a Public Examination.

A Public Examination allows the Liquidator a forensic advantage over any other litigants or potential plaintiffs as it allows the Liquidator to test in an open forum on oath those matters which are relevant to the company's affairs. One example is the ability for a Liquidator to test the "date of insolvency". Through examinations it is able to determine the evidence which would support a particular date of insolvency as a matter of fact. The date of insolvency is important as it is the primary element to a number of claims which are available to a Liquidator.

A Liquidator will have a better opportunity to delve deeper into the affairs of the Companies and will not rely solely on the current books and records of the Companies (which records were prepared as part of a wider group and includes companies outside of those in administration). Those financial records and the inter-relationship between companies within the group and third parties will be able to be fully investigated during the course of a liquidation.

As mentioned above, the Administrators investigations have been hampered due to the state of the company's books and records on appointment. Further, an Administrator does not have the powers of a Liquidator in regard to conducting investigations.

## **JM Kelly Group intercompany loans**

### **Intercompany loans**

JMK Management provided a treasury function on behalf of JM Kelly Group, meaning that the administration function was centralised to this company.

As a result of this structure, all receipts and payments on behalf of the group companies were processed through the account of JMK Management and relevant journal entries were recorded, giving rise to intercompany loan receivables or payables, depending on the transactions.

Consequently, the Company held minimal cash in its own bank account (apart from the term deposit in support of the issued bank guarantees) with the remaining cash held in JMK Management as intercompany loan receivables. Any payment made on behalf of the Company was recorded by reducing the intercompany receivables. This means that the Company's capacity to pay its creditors was dependent upon the financial capacity of JMK Management.

Our investigations to date have revealed that as at our appointment:

- JMK Management has a net intercompany loan liability of \$2.13m, comprising:
  - total intercompany loan payable of \$5.67m; and
  - total intercompany loan receivable of \$3.54m.

Of the \$5.67m, JMK Management owes \$2.06m to the Company.

Refer to *Appendix 8* for a diagram detailing the intercompany loan position for JMK Management.

- A total of approximately \$9.41m was loaned to the companies that are not in external administration. As we are not appointed to these companies, we do not have access to their books and records. Further investigation is required, but demands for payment have been issued to these companies.
- Funds received by JMK Management on behalf of the Company were used to pay other companies' creditors. We suspect that this practice has been undertaken for a number of years, given the treasury function structure.

Further investigation into FY16 (and potentially further) is likely to be required to determine if any recovery action is available to a Liquidator for the benefit of creditors.

However, this is a time-consuming process as it involves:

- more than 43,000 transactions recorded in JMK Management's intercompany loan account for the last 12 months
- 13 group companies, which have intercompany loan accounts with JMK Management.

We have completed a review of the intercompany transactions for the last 7 days, involving 181 transactions. From the review, we identified payments totalling \$328k relating to other group companies were funded by the Company's receipts. This is illustrated in the table below:



**JM Kelly Group  
intercompany loans**

Description (\$'000)	J M Kelly Builders Pty Ltd	Other group companies	Total
Receipts	1,105	97	1,202
Wages	(44)	(220)	(264)
Suppliers	(650)	(205)	(855)
<b>Net funds</b>	<b>411</b>	<b>(328)</b>	<b>83</b>

\*For the period 10 to 16 October 2018 (inclusive)

Similar investigations will need to be undertaken for at least 6 months leading up to the Company's collapse. It may be beneficial to go back further than 6 months but is yet to be determined.

Given the quantum of the transactions, we have not been able to complete the above assessment within the given time. During the course of the winding up, a Liquidator can complete the above assessment as it would likely be required for a public examination.

Once the above assessment is completed, a Liquidator should:

- investigate the use of funds by each of the companies, including the companies not in external administration
- assess prospect of recovery and consider any recovery action
- assess whether the Company's officers have breached their duties and if so, consider conducting a public examination on the relevant Company's officers (subject to availability of funds or external funding).

If recovery of the intercompany loans is made, it may provide a Liquidator with sufficient funds to make a distribution to creditors.

Should any offences by the Company's officers be identified as a result of our investigations (including public examination), a Liquidator, if appointed, will report such offences to the ASIC.

We have issued letters to the companies not in external administration, demanding full payment of the intercompany loans owed to the companies in external administration for the following amounts:

Company	JM Kelly Management	JM Kelly Builders	Kawana Joinery Co	Burns & Construction Twigg Management	Total	
GJ Murphy Holdings P/L	-	3,907,098	-	-	3,907,098	
JMK Pastoral Co P/L	290,727	-	690,000	-	980,727	
Amcorp P/L ATF						
Murphy Holding Trust	507,474	-	2,102,765	900,551	200,000	3,710,790
<b>Total</b>	<b>798,201</b>	<b>3,907,098</b>	<b>2,792,765</b>	<b>900,551</b>	<b>200,000</b>	<b>8,598,615</b>

In addition, Fitzroy Industries Pty Ltd (In Liquidation) is the trustee for Valcayle Trust, which owes approximately \$2.37m to the companies in external administration. We are unable to advise the amount, if any, that will be recovered for this debt.

## QBCC

### QBCC Licence

The Company obtained a builder licence from the QBCC in November 1972 and the nominee changed from Geoff Murphy to John Murphy in June 2016.

From the date of obtaining the licence until 1 October 2014, the Company was required to submit a MFR report to the QBCC from an auditor in order to renew the licence. This report outlined their ongoing compliance with the MFR. These reporting obligations changed from 1 October 2014. Now, the licensee does not need to report yearly and only need to report against the MFR in certain circumstances such as when the licensee seeks to upgrade their turnover limit.

From October 2014 onwards, the Company would be responsible for providing MFR reports to the QBCC if:

- their NTA decreased by 30% from their last advised NTA position; or
- they exceeded their maximum revenue by more than 10% in a financial year.

We note that the Company has a category 6 licence, meaning that the NTA must be between \$4.8m and \$14.4m.

We have identified a number of items that require further investigation in relation to the MFR submissions made to the QBCC, such as:

- security in relation to a debt facility provided and/or guaranteed by the Company
- intercompany loan transactions occurred during the period
- collectability of the related party loans

- values adopted in calculating the current ratio and the NTA.

Each of the above items impacts the calculation of the Company's current ratio and the NTA, which is a condition of the licensing requirements.

We have written to the auditors who signed off on the MFR reports to deliver all books and records relating to the Company, particularly for the MFR reports as at FY18 and 31 December 16.

Upon receipt of the records, we would be able to verify if the above items have appropriately been considered in the MFR reports, which were submitted to the QBCC.

We continue to liaise with the QBCC in relation to the progress of this investigation.

## Progress claims

### Subcontractor payment declaration

There has been an allegation that the Company provided a “fraudulent” declaration(s) in relation to payment of invoices to subcontractors on a number of contracts.

The Company entered into a number of contracts for completion of various projects. As these projects progressed, the Company lodged payment claims for payment. As part of these payment claims, a statutory declaration was required to be provided by the Company including, amongst other things, that relevant creditors have been paid for the particular project.

We have commenced our analysis of the statutory declarations in relation to contracts with payment claims made in the lead up to our appointment. Our analysis involves identifying whether the creditors under the contracts had been paid for their invoices at the date of the submission of the payment claims as stated in the statutory declarations.

Our preliminary review indicates:

- the statutory declarations state that contractors’ workers and subcontractors have been paid for their moneys due and payable up to the date of submission of the payment claim. The actual wording from one of the statutory declarations (emphasis added) is:

*“All the Contractor’s workers who at any time have been engaged on work under the Contract by the Contractor **have been paid**, in accordance with the relevant award or industrial instrument, **all moneys due and payable to them up to the date of submission by the Contractor of Payment Claim**”*

*“All subcontractors of the Contractor **have been paid all that is due and payable to them up to the date of submission by the Contractor of Payment Claim No.** in respect of their part of the work under the Contract”*

- based on the Company’s records, a number of these creditors were unpaid at the time of the submission of the payment claims, despite stating otherwise in the statutory declarations
- those creditors have submitted a proof of debt in the administration, with outstanding invoices which fall within the period declared in the statutory declarations.
- there is superannuation outstanding and payments to labour hire companies (within JM Kelly Group), which also relate to superannuation and workcover that have not been paid.

We are continuing with our analysis of all statutory declarations provided on projects and identifying creditors outstanding at the time of the payment claim submission.

To assist, we invite the relevant creditors to provide copies of invoices with their proofs of debt clearly indicating payment terms and details of any change in agreed payment terms.

Making a false statement in a statutory declaration is an offence. Under section 11 of the *Statutory Declarations Act 1959*, the penalty for making a false statement in a statutory declaration is up to 4 years imprisonment.

Should we have sufficient evidence supporting this allegation, a Liquidator will report this offence to the AFP and/or QPS, and the ASIC (if appropriate).

## ***Project Builders***

### **Liquidation of Project Builders**

Project Builders was a member of JM Kelly Group (specialising in construction industry) and was placed into liquidation on 20 June 2016 due to a legal dispute.

Kelly-Anne Trenfield and John Park of FTI Consulting were appointed as Liquidators by the director. We have been advised that the total creditors' claim in the liquidation is circa \$32m.

Our enquiries have indicated that:

- Project Builders and the Company entered into a Deed of Novation or a Contract Assumption Deed in respect of approximately nine construction contracts, assigning Project Builders' rights, liabilities and obligations under the contracts to the Company
- under the Deeds, the Company has assumed liabilities arising out of the contracts, meaning that suppliers and/or subcontractors under the contracts may have a claim against the Company
- a number of creditors under the contracts may have already been paid out by the Company, and therefore have no claim against the Company
- details of these payouts to the creditors are unknown and subject to our investigation.

We note that a number of creditors have so far claimed to be creditors of Project Builders under the assigned contracts and therefore have made a claim in the liquidation of the Company.

Some of these creditors are not recorded in the Company's books and records. Therefore, we are continuing our investigations and dealing with those creditors to determine whether these creditors have legitimate claims against the Company.

***Books and Records*****Books and Records**

Section 286 of the Act requires that a company maintains financial records that correctly record and explain its transactions, financial position, and performance, and which would enable true and fair financial statements to be prepared and audited.

As the Administrators, we are required to form an opinion as to whether the officers of the Company have complied with the provisions of Section 286 of the Act. In certain instances, a breach of Section 286 of the Act will entitle a liquidator to deem insolvency of the company, which may then be used as grounds to pursue certain actions.

During our investigations, we have considered the records available to us based on the statutory requirements. In our opinion, the Company appears to have maintained adequate books and records that would satisfactorily allow true and fair financial statements to be prepared and audited and accordingly deemed insolvency would not be available to a liquidator if appointed.

## **Timing of insolvency and insolvent trading**

### **Insolvency**

In the course of our investigation we have endeavoured to ascertain whether the Company was insolvent at any particular point in time prior to our appointment as Administrators, in order to determine a point in time from which the provisions of Part 5.7B may be applied.

Solvency is defined in section 95A of the Act as when a company is able to pay all its debts as and when they become due and payable. A company that is not solvent is insolvent.

Whether a company is able to meet its debts as they become due is essentially a “cash flow” test rather than a “balance sheet” test (although its balance sheet is relevant). We have considered both tests as part of our investigations.

Consideration of the entire financial position of a company at any single point in time is required to establish if it is insolvent. This includes factors such as:

- the value of a company’s assets relative to its liabilities
- the nature of these assets and liabilities
- the extent to which cash is expected to be generated from future trading activities
- the extent that cash is available from alternative sources.

In the case of a company, some of the factors that a Liquidator may also consider in determining the solvency position of the company are:

- the ability or otherwise of the company to obtain further funding from its financiers
- the ability or otherwise of the Shareholders or directors to inject further funds into the company
- the ability or otherwise of the Company to attract external investors
- the likelihood of success of negotiations with the company’s suppliers in relation to extending payment terms
- the likelihood of success of negotiations with the company’s key customers in relation to increasing sales
- any other relevant factors that the directors may assert that they had reasonable grounds to continue trading.

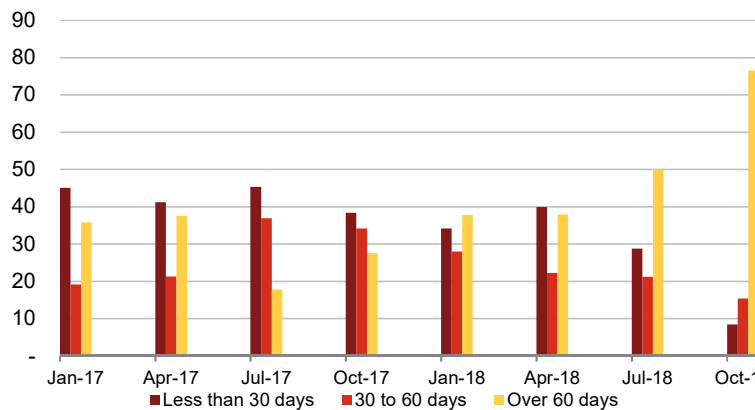
Directors who allow a company to continue trading when there are reasonable grounds for suspecting that the company is, or may become, insolvent may be held personally liable for debts incurred.

A number of circumstances from approximately January 2017 may have indicated that the Company was in financial difficulty. Our preliminary investigation indicates that:

- The Company had difficulty in paying creditors within terms from around January 2017. This is evidenced by a number of emails from creditors following up outstanding payments, ceasing supply until payment was made and discussing payment plans.

**Timing of insolvency and insolvent trading**

- The Company had insufficient cash to pay its creditors given all cash is held by the treasury company, JMK Management(In Liquidation).
- Supply was made on cash on delivery as creditors did not wish to supply on account.
- Rounded payments were identified on the running balance account with the ATO, indicating payment plans were entered into.
- The trade creditor over 60 days increased significantly, particularly from July 2017 (18%) to October 2018 (77%). Please refer to chart below.



%	Jan-17	Apr-17	Jul-17	Oct-17	Jan-18	Apr-18	Jul-18	Oct-18
Less than 30 days	45	41	45	38	34	40	29	8
30 to 60 days	19	21	37	34	28	22	21	15
Over 60 days	36	38	18	28	38	38	50	77
Total	100	100	100	100	100	100	100	100

In January 2017, the trade creditors over 60 days account for 36% of the total trade creditors. Although it was reduced to 18% in July 2017, it continued to increase to 77% as at our appointment date.

- The Company had a current ratio below 1 in July 2017.

\$'000	Jan-17	Jul-17	Jan-18	Jul-18	Oct-18
Current assets	11,954	11,105	9,468	12,646	12,775
Current liabilities	(11,860)	(11,234)	(9,394)	(12,040)	(9,187)
<b>Net current assets</b>	<b>94</b>	<b>(130)</b>	<b>74</b>	<b>606</b>	<b>3,588</b>
Current ratio	1.01	0.99	1.01	1.05	1.39
Less intercompany loan*	(3,034)	(2,560)	(3,560)	(3,907)	(3,907)
<b>Adjusted net current assets</b>	<b>(2,940)</b>	<b>(2,690)</b>	<b>(3,486)</b>	<b>(3,301)</b>	<b>(319)</b>
Adjusted current ratio	0.75	0.76	0.63	0.73	0.97

\*Intercompany loan other than JMK Management

However, if we remove the intercompany loans owed by related companies (other than JMK Management), the Company's current ratio has always been below 1 since January 2017 and potentially further.

Further analysis is required to determine solvency position of the Company. Given the treasury function, intercompany loans transaction and NAB's facility within JM Kelly Group, the Company's solvency status needs to also be considered on a group basis.

**Based on our preliminary review, it appears that the Company may have been insolvent from around January 2017.**

Should a Liquidator be appointed to the Company, the Liquidator would conduct more detailed investigations to pinpoint the date of insolvency.

## ***Timing of insolvency and insolvent trading***    **Insolvent Trading**

Section 588G of the Act provides that the director is obliged to prevent a company from incurring debts whilst insolvent.

As a result of our investigation into potential insolvent trading by the director, we are of the view that there may be claims that a Liquidator could pursue against the director in respect to trading the Company while it was insolvent. During FY16 to our appointment, the Company may have been unable to pay its debts as and when they fell due and may therefore have been insolvent.

Should the Company be wound up at the Second Meeting, future investigations will occur including a public examination. A Liquidator will need to investigate all of the matters noted in greater detail and determine precisely when the Company became insolvent.

Insolvent trading recoveries have been excluded from the dividend calculation in a potential liquidation due to uncertainty in the recoverability from the director.

## **Defences available to Director**

Section 588H of the Act outlines defences for directors against insolvent trading claims, including where the Directors had reasonable grounds for suspecting that the Company was solvent.

The Courts have also drawn a distinction between a severe shortage of liquid assets to meet debts (ie insolvency) and a temporary lack of liquidity. If directors reasonably believe that it is certain or probable (rather than more likely than not or possible) that a company can return to paying their debts as and when they fall due, then they could be justified in continuing to trade the company while pursuing that outcome.

If a claim was to be made against the director for insolvent trading and the director believes that the Company would be able to pay its debts up to the date of our appointment, it would be up to the director to prove that these beliefs were reasonable.



## ***Voidable transactions***

### **Background on voidable transactions**

These investigations centre on transactions entered into by a company that a Liquidator may seek to void or challenge where a company is wound up. Investigations of this nature allow an Administrator to inform Creditors of what funds may become available in the event a company is wound up.

An Administrator's obligations with respect to investigations of this type is not to the same level as a Liquidator. A Liquidator may take many months to investigate these matters before reaching a conclusion as to any potential claims that may be recoverable.

These transactions generally fall into the categories as set out below:

- Unfair preference payments
- Uncommercial transactions
- Unfair loans
- Unreasonable Director related transactions
- Transactions with related parties.

The information provided in this section is based on our investigations to date. We have not yet had the opportunity to consider such matters in detail and more detailed investigations would be required before any final view can be reached.

In order for a transaction to be void as against a Liquidator, a company must have been insolvent at the time of the transaction. In this regard, we refer to our previous comments with respect to solvency.

### **Unfair preferences**

Section 588FA of the Act provides that a transaction is an unfair preference if, and only if:

- the company and the creditor are parties to the transaction (even if someone else is also a party
- the transaction results in the creditor receiving from the company, in respect of an unsecured debt that the company owes the creditor, more than the creditor would receive from the company in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in the winding up of the company.

Even if the transaction is entered into, is given effect to, or is required to be given effect to, because of an Order of an Australian Court or a direction by an agency.

Unfair preferences apply to transactions entered into in a period of up to six months leading up to the appointment.

Where a transaction is part of a continuing business relationship, the preference payment claim could be reduced to the difference between the maximum amount payable within the six months leading up to the appointment and the amount payable at appointment (a "running balance" reduction).

We have commenced our investigation for the purposes of determining whether there were any transactions which may be recoverable under Part 5.7B of the Act, including:

- reviewed the Company's transactions for the six month period to our appointment

## ***Voidable transactions***

- reviewed running balance account statements (when available) to identify any potential “running balance” reduction to claims, including payment plans
- prepared a list of payments that may constitute unfair preferences.

Our investigation is continuing in this regard as we are presently collating the relevant information to enable us to determine any potential preference payments made to creditors.

## **Uncommercial and insolvent transactions**

For an uncommercial transaction to exist at the time of the transaction, it must have the following features:

- a reasonable person would not have entered into the transaction after considering the detriment and benefits to the company
- it was made when the company was insolvent
- it must have been entered into two years or less prior to our appointment as Administrators (however if it was a related entity it may be 4 years prior to the commencement of the administration)
- the person could have reasonably been aware that the company was insolvent at the time of the transaction or the person did not provide valuable consideration.

Our investigations in this regard are ongoing (refer to JM Kelly Group intercompany loans Section).

## ***Voidable transactions***

### **Unfair loans**

Section 588FD of the Act defines a loan as being unfair if:

- the interest on the loan was extortionate when the loan was made, or has since become extortionate because of variation
- the charges in relation to the loan were extortionate when the loan was made, or have since become extortionate because of variation.

In determining whether the interest on the loan was extortionate, the Liquidator will consider the commerciality of the arrangement, including but not limited to:

- the length of the loan term
- the security being offered, including third party security and the ranking of that security
- the amount of the loan
- any historical relationship the lender had with the company prior to the loan being granted
- the assets of the company, i.e. whether they are tangible, valuable etc.

Our preliminary investigations have not identified any unfair loans to the Company.

### **Unreasonable director related transactions**

Section 588FDA of the Act sets out that a transaction of a company is an unreasonable director-related transaction of the company if the transaction is:

- a payment made by the company
- a conveyance, transfer or other disposition by the company of property of the company
- the issue of securities by the company
- the incurring by the company of any obligation to make such a payment, disposition or issue.

Our investigations in this regard are ongoing (refer to JM Kelly Group intercompany loans Section).

## ***Directors' duties***

The Directors and Officers of a company are subject to a civil duty of care and diligence as provided for in Section 180(1) of the Act, amongst other statutory and common law duties.

Subsection 180(2) of the Act provides that a director or other officer who makes a “business judgment” is taken to have met the requisite statutory duty and the equivalent requirements in Common Law and in Equity, in respect of the judgment if they:

- make the judgment in good faith for a proper purpose
- do not have a material personal interest in the subject matter of the judgment
- inform themselves about the subject matter of the judgment to the extent they would reasonably believe to be appropriate
- rationally believe that the judgment is in the best interest of the company.

Pursuant to Section 1317E of the Act, if a Court is satisfied that a person has contravened Section 180 of the Act, it must make a declaration of that contravention. If a person contravenes Section 1317E of the Act, a Court may make a compensation order pursuant to Section 1317H of the Act.

Our investigations into the conduct of the Company's officers have identified a number of matters, which are subject to further investigation, including any breaches.

Investigations in this regard are continuing and a Liquidator, if appointed, will determine if that would be commercial to pursue for compensation for the benefit of the creditors.

## *Other investigations* Allegations of improprieties

There has been an allegation made regarding inappropriate “major renovations” undertaken in 2009 and 2011 for \$26k, which was added to a government contract as a variation, by a JM Kelly Group company.

We currently do not have sufficient information in relation to this allegation, including the relevant contracts. At this stage, we are in the process of collating all books and records of the Company (both physical and electronic files).

We will investigate this matter further, including reviewing relevant documents and understanding whether the contract related to the Company, Project Builders or other JM Kelly Group company.

If any offence with sufficient evidence to support this allegation is identified, a Liquidator will report it to the appropriate authorities, including the AFP and/or QPS.

# *Receipts and Payments*

<b>Receipts and Payments</b>		<b>54</b>
23	Receipts and Payments summary	55

## ***Receipts and Payments summary***

### **Transactions From 17 October 2018 to 7 November 2018**

#### **Receipts**

<b>Account</b>	<b>Net (\$)</b>	<b>GST (\$)</b>	<b>Gross (\$)</b>
Pre-appointment debtors	129,686.17	-	129,686.17
Sale of other current assets	6,363.64	636.36	7,000.00
<b>Total Receipts (inc GST)</b>	<b>136,049.81</b>	<b>636.36</b>	<b>136,686.17</b>

#### **Payments**

<b>Account</b>	<b>Net (\$)</b>	<b>GST (\$)</b>	<b>Gross (\$)</b>
Auctioneer's expenses	262.50	26.25	288.75
Bank account charges	74.40	-	74.40
Other expenses	147.74	-	147.74
Wages and salaries	31,935.45	-	31,935.45
<b>Total Payments (inc GST)</b>	<b>32,420.09</b>	<b>26.25</b>	<b>32,446.34</b>

<b>Cash at bank</b>	<b>104,239.83</b>
---------------------	-------------------

# ***DOCA***

<b>DOCA</b>		<b>56</b>
24	Deed of Company Arrangement Proposal	57



## ***Deed of Company Arrangement Proposal***

A DOCA is a formal agreement between a company, its Creditors and the proponents of the DOCA.

The proponents are interested parties who wish the Creditors to consider their proposal usually involving a compromise of Creditors' claims as opposed to either winding up the company (liquidation) or returning the company to its Directors.

A DOCA may involve:

- Maximising the chance of the company continuing in existence and / or
- Result in a better return for the company's Creditors than in a winding up.

The Administrators must comment on the DOCA proposal if one is received and advise Creditors whether, in their professional opinion, Creditors should accept or reject the proposal. Creditors can consider the proposal and the opinion of the Administrators to form their own view as to whether they wish to accept or reject the proposal. A vote is taken at the second meeting of Creditors where by a simple majority in number and value, Creditors as a group decide to accept the proposed DOCA or not.

If Creditors accept the proposal and a DOCA is entered into, then generally recovery actions against Directors, officers and other potential parties which would otherwise be available to a Liquidator are not able to be commenced. The powers to commence these actions are usually only available to a Liquidator.

To date, there has not been a DOCA proposal submitted for the Company.

# *Return to Creditors*

<b>Return to Creditors</b>		<b>58</b>
25	Estimated Return to Creditors	59
26	Priority creditors (employees)	60

## ***Estimated Return to Creditors***

Should a DOCA proposal be submitted after this report is issued and assuming creditors adjourn the meeting we will prepare a supplementary report to creditors with a estimated return to creditors under the revised structure.

## **Estimated return to creditors**

We are not in a position to provide an estimated return to creditors for the following reasons:

- the current stage of the assets/business sale campaign where asset values are withheld as they are commercially sensitive
- recoverability of circulating assets, particularly debtors, which are subject to liquidated damages claims
- recoverability of the intercompany loans from companies not in external administration is unknown
- prospect of pursuing insolvent trading claim and any voidable transactions for the benefit of creditors is unknown
- the amount owed to the secured creditor and the order of payment of priority made from the companies in the group.

If it proceeds to liquidation, as Liquidators, we will update creditors once an estimate is possible.

## **Priority creditors (employees)**

### **Background**

The following commentary considers the impact on employees under a liquidation.

### **Position of employees in a liquidation**

Employees are afforded a priority in the winding up of a company compared to ordinary unsecured Creditors. The order of priority for typical employee claims is as follows:

- amounts due in respect of wages, superannuation and superannuation guarantee charge outstanding as at the date of the appointment of Administrators, followed by
- amounts due in respect of leave of absence and other amounts due under the terms of an industrial instrument, followed by
- retrenchment payments.

If there are insufficient funds available from the realisable assets of the company to meet the above priority payments, then proceeds from the realisation of the assets secured by a circulating charge will need to be set aside in advance of payments to the secured charge holder.

Typically, assets considered as “circulating charge assets” are inventory, debtors and cash at bank. However, the determination of the category of assets is subject to the terms of the financing and security arrangements between the company and its financier.

### **Government assistance available**

In the event that the Company is wound up and there are insufficient surplus funds available to employees from the Company’s property, then eligible employees may be entitled to lodge a claim for unpaid entitlements under the FEG scheme.

The specific details of eligibility criteria and claims available to employees can be found on the FEG website: [www.employment.gov.au/fair-entitlements-guarantee-feg](http://www.employment.gov.au/fair-entitlements-guarantee-feg).

Eligible claims may include:

- up to thirteen weeks unpaid wages accruing in the period prior to the appointment of Administrators
- unpaid annual leave and long service leave
- up to five weeks unpaid pay in lieu of notice of termination
- up to four weeks unpaid redundancy entitlement for each year of completed service.

Employees should note that FEG will make an assessment of each claim based on the employee’s legal entitlement to such claims under their terms of employment.

# *Second Meeting*

	<b>Second Meeting</b>	<b>61</b>
27	Second Meeting	62
28	Completion of proof of debt and proxy forms	63
29	Matters to be decided at the Second Meeting	64
30	Committee of Inspection	65

## **Second Meeting**

### **Meeting details**

The Second Meeting details are set out below:

**Date:** Wednesday, 21 November 2018

**Registration:** 9.00am AEST

**Meeting time:** 10.00am AEST

**Venue:** Leichhardt Hotel  
Cnr Denham & Bolsover St  
Rockhampton QLD 4700

Attached are the following documents relevant for the Second Meeting:

- Notice of Second Meeting (*Appendix 2*)
- Form 532 – Appointment of Proxy (*Appendix 3*)
- Informal Proof of Debt (*Appendix 4*).

### **Purpose of Second Meeting**

The purpose of the Second Meeting is to enable creditors to decide the future of the Company by choosing one of three options, being that:

1. the Company execute a DOCA; or
2. the administration ends (and control of the Company reverts to its Director); or
3. the Company be wound up.

To assist creditors in understanding the administration better, ASIC has released a package of insolvency information sheets, a list of which is included in *Appendix 10*. These documents have endorsement of ARITA.

### **Voting rights**

Prior to the Second Meeting, the Chairperson will apply the following approach to adjudicating on the admission of creditor claims for voting purposes:

- each proof of debt will be considered individually
- where a claim is contingent in nature, the Chairman will consider the basis of that contingent claim and the sufficiency by which that claim has been particularised.

Secured creditor will be entitled to vote at the meeting without impairing their security. However, in the event a secured creditor votes in favour of a proposed DOCA, they will be bound by the terms of that DOCA if the company subsequently executes same.

## **Completion of Proxy and POD**

### **Proxy**

You must complete a Proxy if either:

- you wish to vote at the meeting but you are unable to attend
- the creditor is a company or a firm.

If the creditor is a company or a firm, you must obtain a Proxy from the company or firm appointing you as a representative, to vote on behalf of the company or firm at the meeting.

The Proxy is valid only for the meeting indicated and any adjournment of that meeting.

You may appoint either a general proxy (a person who may vote at their discretion on motions at the meeting) or a special proxy (who must vote according to your directions).

If you appoint a special proxy, you should indicate on the form what directions you have given. Should you hold a power of attorney for the creditor, evidence of that power of attorney or alternatively, a signed Proxy must be provided.

### **POD**

You should submit a POD for the following reasons:

- To ensure that the Administrators are aware of your debt
- To allow you to vote on the value of your debt at the meeting of creditors

The POD submitted during an administration is informal. It does not mean that the Administrators have agreed to your proof for the purpose of making a dividend distribution. In the event that a dividend distribution is to be made to Creditors, you will be asked to submit a formal proof of debt.

If you do not submit a POD, you will not be able to attend the meeting as creditor and vote on any of the resolutions.

We request that creditors wishing to attend and/or vote at the Second Meeting complete and return the relevant Proxy and POD as instructed by no later than 4.00pm on 20 November 2018 to enable timely processing. We note:

- if you represent more than one creditor, a separate Proxy and Proof of Debt is required for each creditor
- if you lodged a Proxy for the First Meeting held on 29 October 2018, it is NOT valid for the meeting to be held on 21 November 2018. A new Proxy is required.

## ***Matters to be decided at the Second Meeting***

### **What Creditors can decide at the meeting**

At the Second Meeting, Creditors are required to decide whether:

1. The company should execute a DOCA
2. The administration of the company should end
3. The company should be wound up.

In accordance with the requirements of section 439A(4)(b) of the Act, the Administrators must provide an opinion on each of the above options and whether the options is in the Creditors' interests.

### **Administrators' opinion on the options available to Creditors**

#### ***1. Execute a DOCA***

No DOCA has been proposed and the Administrators do not intend to propose one. Therefore, this option is not available to creditors.

Should a DOCA proposal be received prior to the meeting of creditors the Chair will further advise creditors of their options. Essentially this is the ability to adjourn the meeting for up to 45 business days should the creditors at the meeting so resolve that this is in their best interests.

#### ***2. The Administration comes to an end***

The Company is insolvent and therefore we do not consider it to be in the Creditors' interest that the administration end and the Company be returned to the Directors.

#### ***3. The Company is wound up***

We recommend that the Company be wound up and placed into Liquidation.

The Administrators' formal Statement of Opinion is enclosed in *Appendix 1*.



## ***Committee of Inspection***

At the Second Meeting, creditors can resolve to appoint a COI for the Company. A COI is a group of elected creditors (minimum of 2 required) to supervise and assist a company's liquidator.

We recommend a COI be appointed for the Company.

Creditors should consider whether they can be a COI member, as membership of a COI requires attendance at meetings (telephone facilities will be made available so members do not have to attend in person).

Importantly, for a creditor to be eligible for appointment as a member of a COI, they must either:

- attend the Second Meeting; or
- appoint a general power of attorney to attend the Second Meeting on their behalf; or
- authorise a person in writing to be a member of the COI on their behalf.

# *Remuneration*

	<b>Remuneration</b>	<b>66</b>
31	Administrators' remuneration	67

## Remuneration

### Administrators' remuneration

The Administrator of a company is entitled to receive such remuneration as is determined:

- by agreement with the committee of creditors (if any)
- by resolution of the company's creditors
- if there is no such agreement or resolution – by the Court.

At the Second Meeting, we will be seeking creditors' resolutions for the approval of our remuneration for the work undertaken by us, our partners and staff as summarised below.

Period	Total (\$) plus GST
<b>17 October 2018 to 7 November 2018 (Actual)</b>	292,816.90
<b>8 November 2018 to the end of administration (Estimate)</b>	150,000.00
<b>Total</b>	<b>442,816.90</b>

Details of the key activities undertaken by us for the periods have been summarised in *Appendix 9*.

In our first report to creditors dated 19 October 2018, we estimated that the administration would cost approximately between \$450k and \$550k plus GST.

We were able to manage our remuneration below the low end of our initial estimate due to efficiency of utilising our resources to complete the tasks on a group basis, rather than on an individual company basis.

### Liquidators' remuneration

Pursuant to Section 473(3) of the Act, a liquidator is entitled to receive such remuneration as is determined:

- a) if there is a COI – by agreement between the liquidator and the COI; or
- b) if there is no COI or the liquidator and the COI fail to agree:
  - i. by resolution of the creditors; or
  - ii. if no such resolution is passed – by the Court.

Resolutions will be sought at the meeting to be held on 21 November 2018 that the Liquidators' anticipated future remuneration (GST exclusive) be calculated using the same method as for the Administrators, being time based / hourly rates, but subject to an initial cap of \$300,000 plus GST.

The key activities expected to be undertaken by the liquidator are summarised at *Appendix 9*.

Should actual costs exceed the above estimates, the liquidators will advise creditors and seek further approval at future meetings of creditors and / or the COI as appropriate.

# *Statement of Administrators' Opinion*

<b>Statement of Administrators' Opinion</b>		<b>68</b>
32	Administrators' opinion	69

## ***Statement of Administrators' Opinion***

It is our opinion that creditors' interests are best served by the Company being wound up (i.e. placed into liquidation) for the reasons as set out in this Report and in the Administrators' Statement of Opinion attached as *Appendix 1*.

# Appendices

<b>Appendices</b>		<b>70</b>
1	Statement of Administrators' Opinion	71
2	Notice of Second Meeting	72
3	Form 532 - Appointment of Proxy	73
4	Informal Proof of Debt	74
5	DIRRI	75
6	Registered charges	76
7	JM Kelly Group Structure	77
8	JM Kelly Management Pty Ltd intercompany loans	79
9	Remuneration report	81
10	ASIC - Insolvency information for directors, employees, creditors and shareholders	82
11	Glossary	83

---

## *Appendix 1 – Statement of Administrators' Opinion*



## Statement of Administrators' Opinion

### Pursuant to IPR 75-225(3)(b)

**J M Kelly Builders Pty Ltd  
(Administrators Appointed)  
ACN: 009 801 665  
(the Company)**

This statement sets out our opinions in relation to the alternatives which the creditors of the Company will consider at the Second Meeting to be held on 21 November 2018 at 10:00am at Leichhardt Hotel, Cnr Denham and Bolsover St, Rockhampton QLD 4700.

The following options are available to creditors to decide at the Second Meeting pursuant to Section 439C of the Act, being that:

- a) the Company should execute a Deed of Company Arrangement; or
- b) the administration of the Company should end; or
- c) the Company be wound up.

#### Opinion

IPR 75-225(3)(b) requires the Administrators to express an opinion and give their reasons on each option available to creditors:

Option	Our opinion and reason(s)
Company execute a Deed of Company Arrangement (DOCA)	<ul style="list-style-type: none"><li>– no DOCA proposal had been submitted to the Administrators</li><li>– this option is NOT available to the creditors of the Company</li></ul>
The administration should end	<ul style="list-style-type: none"><li>– This option is NOT in the creditors' interests as the Company is insolvent and there is no likelihood of it returning to solvency in the current circumstances</li></ul>
The Company should be wound up	<ul style="list-style-type: none"><li>– This option is presently the only option available to creditors and therefore the Administrators recommend that the Company be wound up</li></ul>

**PricewaterhouseCoopers, ABN 52 780 433 757**  
480 Queen Street, BRISBANE QLD 4000, GPO Box 150, BRISBANE QLD 4001  
T: +61 7 3257 5000, F: +61 7 3257 5999, [www.pwc.com.au](http://www.pwc.com.au)

Liability limited by a scheme approved under Professional Standards Legislation.





### Additional information for creditors

IPR 75-225(3)(b) requires that the Administrators provide the following additional information to creditors:

Information for creditors	Administrators' response
Such other information as will enable creditors to make an informed decision	– This opinion should be read in conjunction with our Second Report to Creditors and accompanying appendices.
Voidable transactions recoverable by a liquidator	– Our preliminary investigations have identified a number of voidable transactions that may be recoverable by a liquidator (refer Section 20 of the Second Report to Creditors).

DATED: 13 November 2018

**Derrick Vickers**  
Administrator

---

## ***Appendix 2 – Notice of Second Meeting***

**Form 529**

Corporations Act 2001

**NOTICE OF MEETING OF CREDITORS**

**J M Kelly Builders Pty Ltd  
(Administrators Appointed)  
ACN 009 801 665 (the Company)**

Notice is given that a meeting of the creditors of the Company will be held at 10.00am (AEST) on Wednesday, 21 November 2018 at the following venue:

**Venue:** Leichhardt Hotel  
Cnr Denham and Bolsover Street  
Rockhampton QLD 4700

**Registration:** 9.00am (AEST)

**Meeting time:** 10.00am (AEST)

**Agenda**

1. To receive the report by the joint and several Administrators concerning the Company's business, property, affairs and financial circumstances.
2. For creditors to consider the options available and to resolve that:
  - (a) the Company execute a Deed of Company Arrangement, or
  - (b) the administration should end, or
  - (c) the Company be wound up.
3. To approve:
  - (a) the Administrators' remuneration
  - (b) the Deed Administrators' remuneration, if one is appointed or
  - (c) the Liquidators' remuneration, if one is appointed.
4. If the Company is wound up, to consider the appointment of a Committee of Inspection and, if so, who are to be the committee members.
5. Any other business.

Creditors wishing to attend and vote are advised that proof of debts and proxies must be submitted to the Administrators by 4.00pm on Tuesday, 20 November 2018.

Dated 13 November 2018



**Derrick Vickers**  
Administrator

Section 75-85 of the Insolvency Practice Rules (Corporations) sets out the entitlement to vote at meetings of creditors:

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
  - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
  - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive of the debt or claim:
    - (i) those particulars; or
    - (ii) if required—a formal proof of the debt or claim.
- (4) A creditor must not vote in respect of:
  - (a) an unliquidated debt; or
  - (b) a contingent debt; or
  - (c) an unliquidated or a contingent claim; or
  - (d) a debt the value of which is not established; unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
  - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
  - (b) estimate its value;
  - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
  - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
  - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
  - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force

---

## *Appendix 3 – Form 532 – Appointment of Proxy*

**FORM 532**  
*Corporations Act 2001*  
**APPOINTMENT OF PROXY**  
**J M Kelly Builders Pty Ltd**  
**(Administrators Appointed) (the Company)**  
**ACN 009 801 665**

**Section A.**

I/We, .....,  
*(If a company, strike out "I" and set out full name of the company)*

of .....,  
*(address)*

a creditor of the Company appoint .....  
as my/our proxy, or in his/her absence....., to vote at the meeting of creditors  
to be held on 21 November 2018 at Leichhardt Hotel, Denham St and Bolsover St, Rockhampton City QLD  
4700 at 10:00am or at any adjournment of that meeting.

**Section B.**

**Option 1:**  If appointed as a general proxy, as he/she determines on my/our behalf  
*(Please proceed to section C ie do not complete the table below*

*Should creditors nominate "The Chairperson" as the proxy holder and the Chairperson is the Joint Administrator (or staff of the Administrators) then the general proxy cannot be exercised with regard to remuneration or any other matter that may financially benefit the Administrators. To submit a general proxy, the "General" proxy type box above should be marked with an "X".*

**and/or**

**Option 2:**  If appointed as a special proxy in the manner set out below:  
*(Please complete the table below before proceeding to section C)*

*Should creditors nominate "The Chairperson" as the proxy holder and the chairperson is the Joint Administrator (or staff of the Administrators) then the holder of the proxy must vote in accordance with the directions marked (For/Against/Abstain), this includes resolutions with regard to remuneration or any other matters that may financially benefit the Administrators. To submit a special proxy, the "Special" proxy type box above should be marked with an "X"*

No	Resolution	For	Against	Abstain
1	To approve the Administrators' remuneration for the period 17 October 2018 to 7 November 2018 for an amount of \$292,816.90 plus GST as set out in the Remuneration Approval Report dated 13 November 2018 to be drawn from available funds immediately or as funds become available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	To approve the Administrators' remuneration for the period 8 November 2018 to the conclusion of the Administration up to a maximum of \$150,000.00 plus GST, as set out in the Remuneration Approval Report dated 13 November 2018 to be drawn from available funds immediately or as funds become available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	The Company execute a Deed of Company Arrangement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	The Administration should end (and control revert back to the Company director).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	The Company be wound up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	If the Company is wound up, that a Committee of Inspection be formed comprising representatives as nominated at the meeting of creditors.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7	To approve the Liquidators' remuneration for the period 21 November 2018 to 30 June 2019 up to a maximum of \$300,000.00 plus GST, as set out in the Remuneration Approval Report dated 13 November 2018 to be drawn from available funds as incurred or as funds become available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	---	--------------------------	--------------------------	--------------------------

**Section C.**

If the creditor is an individual

.....

If the creditor is a Company

.....  
Director/Company Secretary

.....  
Print name

Dated this            day of November 2018

**CERTIFICATE OF WITNESS**

**Please Note:** *This certificate is to be completed only where the person giving the proxy is blind or incapable of writing. The signature of the creditor is not to be attested by the person nominated as proxy.*

I, \_\_\_\_\_ of \_\_\_\_\_ certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him before he attached his signature or mark to the instrument.

Signature of witness: \_\_\_\_\_

---

## *Appendix 4 – Informal Proof of Debt*



**INFORMAL PROOF OF DEBT FORM**

*s75-85 Insolvency Practice  
Rules 2016*

**J M Kelly Builders Pty Ltd  
(Administrators Appointed)  
ACN 009 801 665**

Name of creditor .....

Address of Creditor .....

ABN: .....

Telephone number: .....

Amount of debt claimed: \$ ..... (including GST \$ ..... )

Consideration for debt (i.e, the nature of goods or services supplied and the period during which they were supplied):

.....

.....

.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....

.....

.....

Other information:

.....

.....

.....  
Signature of Creditor  
(or person authorised by creditor)

.....  
Dated

**Notes:**

Under the Insolvency Practice Rules (Corporations) (IPR) 75-85, a creditor is not entitled to vote at a meeting unless:  
a. his or her claim has been admitted, wholly or in part, by the Joint and Several Administrators; or  
b. he or she has lodged with the Joint and Several Administrators particulars of the debt or claim, or if required, a formal proof of debt.  
At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value of the security (IPR 75-87).  
Proxies must be made available to the Joint and Several Administrators.

---

## *Appendix 5 – DIRRI*

## **Declaration of Independence, Relevant Relationships and Indemnities**

**J M Kelly Builders Pty Ltd  
(Administrators Appointed) (the Company)  
ACN 009 801 665**

A Practitioner appointed to an insolvent entity is required to make declarations as to:

- A. their independence generally
- B. relevant relationships, including:
  - i. the circumstances of the appointment
  - ii. any relationships with the Company and others within the previous 24 months
  - iii. any prior professional services for the Company within the previous 24 months
  - iv. that there are no other relationships to declare and
- C. any indemnities given, or up-front payments made, to the Practitioner.

On 1 August 2018, PPB Advisory merged with PricewaterhouseCoopers (**PwC**). As a result, the majority of PPB Advisory's partners and staff joined PwC. One of the Administrators, Michael Owen, is a former partner of PPB Advisory.

This declaration is made in respect of us, the partners and staff of PwC, and all members of the PwC global network in Australia.

### **A. Independence**

We, Derrick Vickers and Michael Owen of PwC, 480 Queen Street, BRISBANE QLD 4000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as joint and several Administrators of the Company in accordance with the law and applicable professional standards. The assessment included a review of PPB Advisory matters for the 24 month period prior to accepting the appointment as Administrators.

This assessment identified no real or potential risks to our independence. We are not aware of any conflicts at the time of our appointment or any reasons that would prevent us from accepting this appointment.

In the event that any conflict arises, we will seek independent legal advice or court directions if appropriate.

In the event that this declaration needs to be updated we will issue written notice to all known creditors as per the Company's records.

### **B. Declaration of Relationships**

#### **i. Circumstances of appointment**

On 27 August 2018, Derrick Vickers, a Partner at PwC and Kevin Holzapfel, a Managing Director at PwC were contacted by Korda Mentha as advisers to the J M Kelly Group to discuss the possibility of taking an appointment as Voluntary Administrator or Liquidator of various Group companies. The meeting on 27 August 2018 involved high level discussions regarding the Group's recent trading performance, issues contributing to its current cash flow difficulties and the structure of the Group.

A further meeting was held with the Directors on 10 September 2018 at KordaMentha's office whereby the Directors and/or related parties and their adviser, KordaMentha indicated that they were in discussions with the secured creditor and awaiting a decision in relation to legal

action then on foot with the Queensland Building and Construction Commission (QBCC). As a result, the timing of the appointment was not known.

In the seven days prior to 17 October 2018, KordaMentha contacted Derrick Vickers by phone on a number of occasions to advise of developments in the likely timing of the appointment. A further meeting with the Directors was held at KordaMentha's office on 15 October 2018 at which the directors and their advisors provided an update.

No specific advice was provided in relation to the company's or the Group's circumstances.

We were subsequently appointed Joint and Several Administrators of the Company by its directors. We did not provide other information or advice to the Company, other Group entities, its directors and advisors prior to our appointment, beyond that outlined in this Declaration of Independence, Relevant Relationships and Indemnities (DIRRI).

**ii. Relevant relationships (excluding professional services to the insolvent)**

PwC undertakes assignments for a large number of corporate and government entities in Australia and may have acted for some creditors, including secured creditors, of the Company. We are not aware of any such relationship that would influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Administration of the Company in an objective and impartial manner.

The partners and staff of PPB Advisory who joined PwC from 1 August 2018 may have previously acted for some creditors of the Company. We are not aware of any such relationship that would influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Administration of the Company in an objective and impartial manner.

Neither we, nor a member of our firm, have had within the preceding 24 months, any relationships with the Company or its associates other than as mentioned in section B i above.

We, or a member of our firm, have had within the preceding 24 months, ongoing relationships with:

**National Australia Bank, Commonwealth Bank of Australia, BOQ Equipment Finance and Australia and New Zealand Banking Group (The Security Holders)**

Nature of relationship	Reasons why no conflict of interest or duty
The Security Holders hold security interests over the Company's property. We have professional relationships with the majority of the major banks and lenders in Australia and with a number of staff within the Security Holders' organisations, particularly in the credit and workout areas. We have previously undertaken formal and informal assignments on behalf of the Security Holders for a number of years.	We believe that these relationships do not result in a conflict of interest or duty because our previous relationships with the Security Holders were not in relation to the Company's and/or the director's affairs, or related parties of the Company and/or the director.

**KordaMentha**

<b>Nature of relationship</b>	<b>Reasons why no conflict of interest or duty</b>
<p>KordaMentha referred the Company to us as they had acted on behalf of the Company</p> <p>We have had previous professional relationships with KordaMentha over a number of years, including receiving referrals from KordaMentha in relation to insolvency appointments.</p> <p>We have also referred insolvency appointments to KordaMentha in the past 24 months.</p>	<p>Our believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"><li>• My relationship with KordaMentha is not in relation to the affairs or related parties of the Company.</li><li>• All decisions, actions and investigations are undertaken or made by us independently.</li></ul> <p>Our referral relationship with KordaMentha is not exclusive in nature and we refer work to different insolvency practitioners at a number of firms.</p>

**Deputy Commissioner of Taxation, Workcover and/or major banks (unsecured creditors)**

<b>Nature of relationship</b>	<b>Reasons why no conflict of interest or duty</b>
<p>Various Practitioners within PwC are members of panels for appointments as liquidators and bankruptcy trustees.</p>	<p>We believe that these relationships do not result in a conflict of interest or duty. Our previous relationship with unsecured creditors has not been and is not in relation to the Company's affairs and/or the Company's Director or related parties of the Company</p>

### **iii. Prior professional services to the insolvent**

Neither we, nor the firms (ie PwC and PPB Advisory), have provided any professional services to the Company in the previous 24 months. In July 2018 the Company approached PwC's Debt Capital Advisory team regarding a potential refinance of its facilities, however no formal engagement was made by the Company.

### **iv. No other relevant relationships to disclose**

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially the whole of the Company's property that should be disclosed.

### **C. Indemnities and up-front payments**

We have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute. We have not received any upfront payments in respect of our remuneration or disbursements.

Dated this 19<sup>th</sup> day of October 2018



**Derrick Vickers**  
Administrator



**Michael Owen**  
Administrator

#### **Note:**

- 1. If circumstances change, or new information is identified, we are required under the Corporations Act 2001 and the Australian Restructuring Insolvency & Turnaround Association (ARITA) Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.*
- 2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.*

---

## ***Appendix 6 – Registered charges***

JM Kelly Builders Pty Ltd (Administrators Appointed)

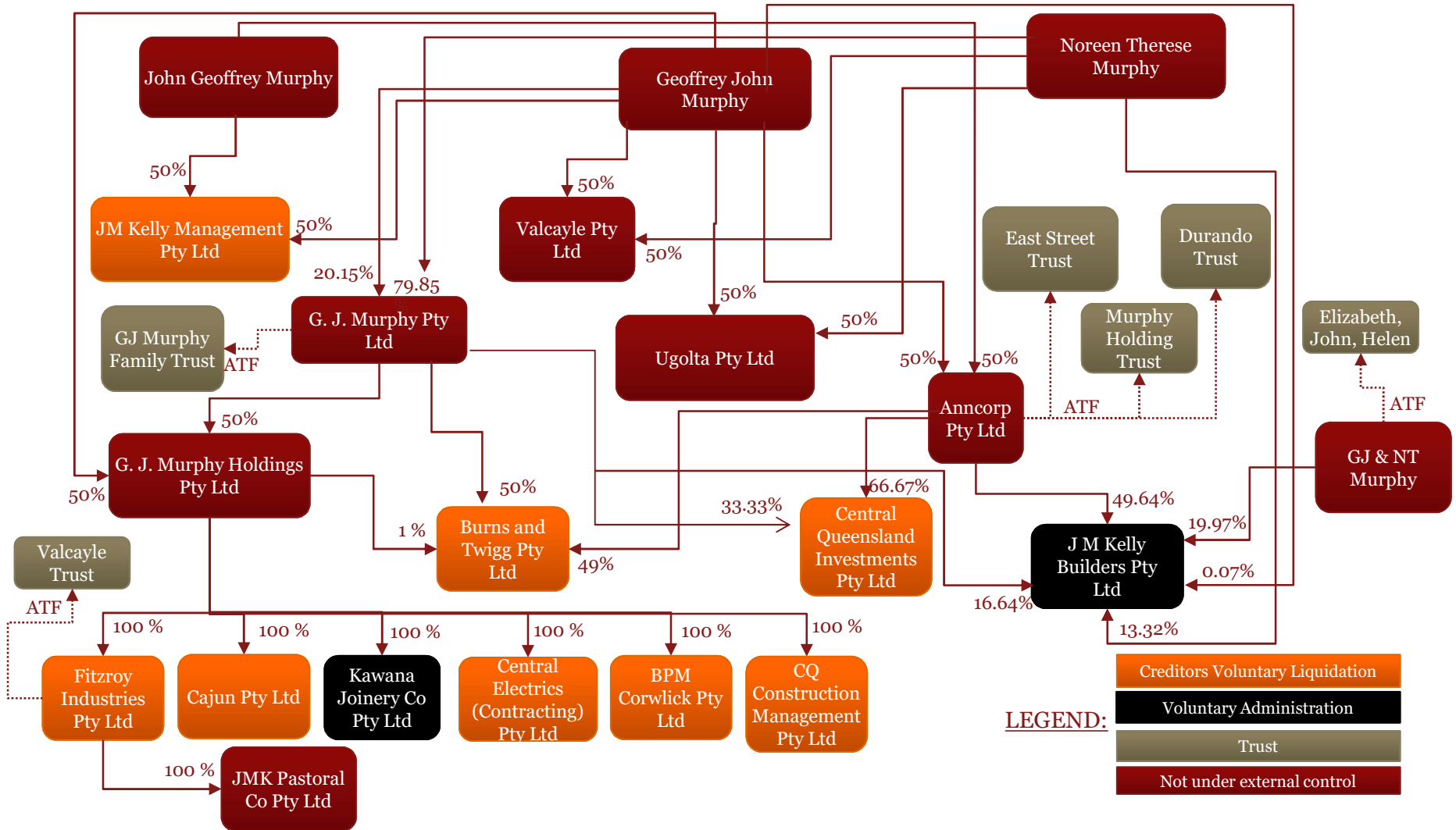
Secured Party Group	No.	
	Registration	Type of security
ACO POLYCRETE PTY LTD ABN 65 050 102 942	1	Other Goods
ACROW FORMWORK AND SCAFFOLDING PTY LTD ACN 004 284 806	1	Other Goods
ADBRI MASONRY PTY LTD ABN 31 009 687 521	1	Other Goods
ASI JD MACDONALD PTY. LTD. ACN 162 663 872	1	Other Goods
ATCO STRUCTURES & LOGISTICS PTY LTD ACN 083 902 309	1	Other Goods
ATLAS STEELS PTY LTD ACN 616 786 648	1	Other Goods
AUSCO MODULAR PTY LIMITED ACN 010 654 994	1	Other Goods
AW DISTRIBUTION PTY LTD ACN 158 345 834	1	Other Goods
AXIOM GROUP INVESTMENTS PTY LTD ACN 164 133 000	1	Other Goods
BLUESCOPE DISTRIBUTION PTY LTD ACN 096 380 068	1	Other Goods
BOC LIMITED ACN 000 029 729	1	Other Goods
BORAL CSR BRICKS PTY LIMITED ACN 168 794 821	1	Other Goods
BORAL LIMITED ACN 008 421 761 & Others	1	Other Goods
BRISTILE GUARDIANS PTY LTD ACN 079 711 630 & Others	1	Other Goods
CENTRAL COMBINED GROUP PTY LTD ACN 010 402 114 & Others	1	Other Goods
CHARLES PORTER AND SONS PROPRIETARY LIMITED ACN 009 659 232	1	Other Goods
COATES HIRE OPERATIONS PTY LIMITED ACN 074 126 971	4	Motor Vehicle & Other Goods
COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124	1	Motor Vehicle
FAGERSTA STEELS PTY LTD ACN 157 676 796	1	Other Goods
FANTECH PTY. LTD. ACN 005 434 024	1	Other Goods
HASTINGS DEERING (AUSTRALIA) LIMITED ACN 054 094 647	1	Motor Vehicle
HOLCIM (AUSTRALIA) PTY LTD ACN 099 732 297	1	Other Goods
HUME DOORS & TIMBER (QLD) PTY. LTD. ACN 009 994 996	1	Other Goods
J M KELLY BUILDERS PTY LIMITED ACN 009 801 665	2	Other Goods
KENNARDS HIRE PTY LIMITED ACN 001 740 727	4	Motor Vehicle & Other Goods
KEYCUT SERVICES PTY. LTD. ACN 060 176 703	1	Other Goods
MESH & BAR PTY. LIMITED ACN 084 464 746	1	Other Goods
METECNO PTY LTD ACN 096 402 934	1	Other Goods
METROLL ROOFING PTY LTD ACN 010 065 102	1	Other Goods
NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937	4	All PAP
NATIONAL MASONRY PTY LTD ACN 155 064 136	1	Other Goods
NOTEG PTY LTD ACN 115 221 004	1	Other Goods
ONSITE RENTAL GROUP OPERATIONS PTY LTD ACN 126 102 485	1	Other Goods
RAPID METAL DEVELOPMENTS (AUSTRALIA) PROPRIETARY LIMITED ACN 004 304 447	1	Other Goods
REECE AUSTRALIA PTY LTD ACN 004 097 090	1	Other Goods
RMB SCAFFOLDING PTY LTD ACN 109 527 960	1	Other Goods
ROYAL WOLF TRADING AUSTRALIA PTY LIMITED ACN 069 244 417	1	Other Goods
SITEMAX GROUP PTY LTD ACN 600 760 030	1	Other Goods
SKYREACH (VIC) PTY LIMITED ACN 119 453 315; SKYREACH (NSW) PTY LIMITED ACN 142 415 638; SKYREACH GROUP HOLDINGS PTY LTD ACN 610 283 157; SKYREACH PTY LTD ACN 076 542 955	2	Motor Vehicle & Other Goods
STRAMIT CORPORATION PTY LIMITED ACN 005 010 195	1	Other Goods
THE TRUSTEE FOR THE D J MACCORMICK FAMILY TRUST ABN 96 126 176 094; MARY DONALD NOMINEES PTY LTD ACN 008 804 368	2	Motor Vehicle & Other Goods
TRADELINK PTY LIMITED ACN 000 003 832	1	Other Goods
ULLRICH ALUMINIUM PTY. LIMITED ACN 001 697 445; WINTEC ALUMINIUM PTY LTD ACN 117 915 189	1	Other Goods
WURTH AUSTRALIA PTY LTD ACN 002 487 096	1	Other Goods



---

## ***Appendix 7 – JM Kelly Group Structure***

# JM Kelly Group Structure

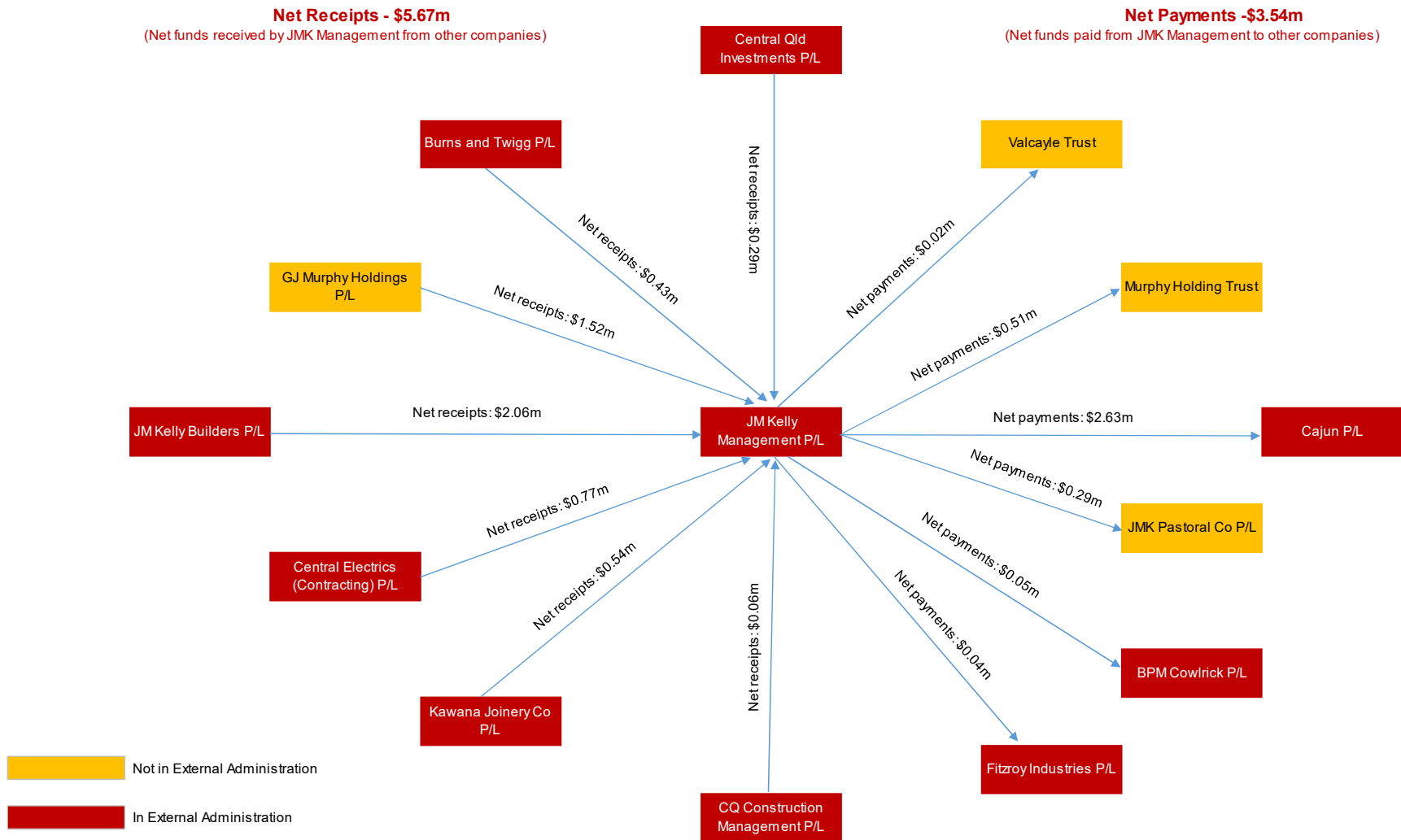


---

## ***Appendix 8 – JM Kelly Management Pty Ltd intercompany loans***

### JM Kelly Management Pty Ltd (In Liquidation)

#### Intercompany Loan Diagram



---

## *Appendix 9 – Remuneration report*

## Remuneration Approval Report

### J M Kelly Builders Pty Ltd (Administrators Appointed) ACN 009 801 665 (the Company)

This remuneration approval report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration.

This report has the following information included:

---

Part 1: Declaration .....	2
Part 2: Executive summary .....	2
Part 3: Remuneration .....	3
3.1 Remuneration claim resolutions .....	3
3.2 Details of remuneration .....	3
3.3 Total remuneration reconciliation .....	3
3.4 Likely impact on dividends .....	4
3.5 Remuneration recovered from external sources .....	4
<hr/>	
Part 4: Disbursements .....	4
Part 5: Report on Progress of the Administration .....	5
Part 6: Summary of receipts and payments .....	5
Part 7: Queries .....	5
Appendix A – Calculations of remuneration schedule .....	7
Appendix B – Table of major tasks for remuneration .....	11

You should read this report and the other documentation that we have sent you and then attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, you are also able to appoint a representative to attend on your behalf by lodging a proxy form. Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised.

If you have any questions or need any assistance, please contact our Creditor hotline on (07) 3257 5679 or via email to [creditorsjmk@au.pwc.com](mailto:creditorsjmk@au.pwc.com).

## ***Part 1: Declaration***

We, Derrick Vickers and Michael Owen of PwC, have undertaken a proper assessment of this remuneration claim for our appointment as Joint and Several Voluntary Administrators of J M Kelly Builders Pty Ltd (Administrators Appointed) in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the administration.

Dated this 13<sup>th</sup> day of November 2018



Derrick Vickers and Michael Owen  
Joint and Several Voluntary Administrators

## ***Part 2: Executive summary***

An Administrator's remuneration can only be fixed by the Company's creditors or by application to the Court.

Our remuneration to date has been calculated based on the time spent by the Administrators and our staff for the period 17 October 2018 to 7 November 2018. You should read this notice in conjunction with our Initial Remuneration Notice dated 19 October 2018. In addition, we are also seeking creditor approval for remuneration incurred and (expected) to be incurred for the period from 8 November 2018 to the 30 June 2019.

The total remuneration for this appointment is estimated to be \$742,816.90 (excl GST).

Remuneration currently claimed is summarised below:

<b>Period</b>	<b>Report Reference</b>	<b>Amount (excl. GST)</b>
<b>Current remuneration claim:</b>		
<b><i>Voluntary Administration</i></b>		
Resolution 1: 17 October 2018 to 7 November 2018	Part 3 below and Second Report	\$292,816.90
Resolution 2: 8 November 2018 to conclusion of the Voluntary Administration	Part 3 below	\$150,000.00
<b>Total</b>		<b>\$442,816.90</b>
<b><i>Liquidation</i></b>		
Resolution 3: 21 November 2018 to 30 June 2019	Part 3 below	\$300,000.00
<b>Total</b>		<b>\$300,000.00</b>
<b>TOTAL remuneration claimed</b>		<b>\$742,816.90</b>

\* Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the administration. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

## **Part 3: Remuneration**

### **3.1 Remuneration claim resolutions**

At the second meeting of creditors to be held on 21 November 2018, we will be seeking approval of the following resolutions to approve our remuneration. Details to support these resolutions are included in section 3.2 and attached schedules.

#### **Resolution #1 from 17 October 2018 to 7 November 2018**

*“That the remuneration of the Administrators is approved for the period 17 October 2018 to 7 November 2018 for an amount of \$292,816.90 plus GST as set out in the Remuneration Approval Report dated 13 November 2018 to be drawn from available funds immediately or as funds become available.”*

#### **Resolution #2 from 8 November 2018 to conclusion of Voluntary Administration**

*“That the remuneration of the Administrators is approved for the period 8 November 2018 to the conclusion of the Administration up to a maximum of \$150,000.00 plus GST, as set out in the Remuneration Approval Report dated 13 November 2018 to be drawn from available funds immediately or as funds become available.”*

#### **Resolution #3 from commencement of Liquidation to 30 June 2019 (if applicable)**

*“That the remuneration of the Liquidators is approved for the period 21 November 2018 to 30 June 2019 up to a maximum of \$300,000.00 plus GST, as set out in the Remuneration Approval Report dated 13 November 2018 to be drawn from available funds as incurred or as funds become available. This amount may be revised by resolution of creditors or by order of the court.”*

Future remuneration is approved subject to a maximum or cap. Sometimes the actual cost of the administration will exceed the maximum which has been approved, in which case, we may seek another resolution for additional remuneration. We will not pay any amount exceeding the maximum without this approval.

Where funds are available, we will usually pay approved remuneration at intervals not less than one month. Where funds are not available, remuneration will not be paid.

### **3.2 Details of remuneration**

The basis of calculating the remuneration claims are summarised in **Appendix A**.

The details of the major tasks performed and the costs associated with each of those major tasks are contained in **Appendix B**.

In preparing this remuneration approval report, we have made our best estimate at what we believe the Voluntary Administration will cost to complete and we do not anticipate that we will have to ask creditors to approve any further remuneration. However, should the Voluntary Administration not proceed as expected, we will advise creditors and we may seek approval of further remuneration and provide details on why the remuneration has changed.

### **3.3 Total remuneration reconciliation**

The total remuneration for this appointment is estimated to be \$742,816.90 (excl GST).

In preparing this remuneration approval report, we have made our best estimate at what we believe the administration will cost to complete. We do not anticipate that we will have to ask creditors to approve any further remuneration. However, should the Voluntary Administration / Liquidation not proceed as expected, we will advise creditors and we may seek approval of further remuneration and provide details on why the remuneration has changed. Matters that may affect the progress and the cost of the liquidation, include:

- Determining a strategy to sell assets of the Company and liaise with interested parties.



- Calculation of employee entitlements and liaising with FEG regarding the verification and distribution of entitlements.
- Liaising with suppliers regarding the ongoing trading and winding down of operations of the Company.
- Conducting statutory investigations and reporting to ASIC.
- Conducting other investigations, including intercompany loans QBCC and progress claims, as per our report.
- Answering creditor queries as required.

Creditors will have an opportunity to ask any questions they may have in respect of the cost of the Voluntary Administration or Liquidation at the meeting.

### **3.4 Likely impact on dividends**

The *Corporations Act 2001* sets the order for payment of claims against the Company and it provides for remuneration of the Administrators to be paid in priority to other claims. This ensures that when there are sufficient funds, the Administrators receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

Any dividend to creditors will also be impacted by the amount of assets that we are able to recover and the amount of creditor claims that are admitted to participate in any dividend, including any claims by priority creditors such as employees.

We are unable to provide a dividend estimate of any certainty at this stage of the Administration.

### **3.5 Remuneration recovered from external sources**

We have not received any funding from external sources for our remuneration.

## ***Part 4: Disbursements***

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** – these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
- **Internal disbursements** such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We have undertaken a proper assessment of disbursements claimed for the Company in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper.

We are not seeking creditor approval for any disbursements as no internal disbursements have been incurred in this administration.

### ***Expenses for the period 17 October 2018 to 7 November 2018***

The following disbursements have been incurred by our firm for the period from 17 October 2018 to 7 November 2018. Where amounts have been paid to our firm for externally provided services and costs, those payments are in reimbursement of cost previously paid by our firm, either due to lack of funds in the Administration at the time the payment was due, or the direct invoicing of our firm by the supplier. All of the below transactions will appear in the final receipts and payments listed but may not be included in the current receipts and

payments listing as they were paid by our staff directly. Only payments to third parties directly from the Administration bank account are included in the attached listing of receipts and payments.

Category	Amount	Description
Travel - Airfare	2,875.62	Airfare and airfare booking fees to and from client
Travel - Accomodation	4,525.22	Accomodation for work while on site
Travel - Other	1,508.20	Travel between client site and accomodation and other expenses relating to staff travel
Administration	946.78	Bookings for meeting of creditors, mail redirection expenses, other general administration expenses
IT Equipment	847.48	IT equipment for back up of data
<b>Total</b>	<b>10,703.31</b>	
GST	1,070.33	
<b>Total (inc GST)</b>	<b>11,773.64</b>	

## ***Part 5: Report on Progress of the Administration***

Refer to the report to creditors dated 13 November 2018.

## ***Part 6: Summary of receipts and payments***

The summary of receipts and payments for the period from 17 October 2018 to 7 November 2018 is contained in the Second Report.

## ***Part 7: Queries***

Please contact the creditors hotline on (07) 3257 5679 or by email on creditorsjmk@au.pwc.com should you have any queries or require any further information.

You can also refer to the creditor information sheet enclosed in this report.

You can access additional information on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at <http://asic.gov.au/regulatory-resources/insolvency/insolvency-information-sheets/>

# Appendices

***Appendix A – Calculations of remuneration  
schedule***

## Schedule A1

### Resolution #1: 17 October 2018 to 7 November 2018

The below table sets out the costs for the major tasks performed by the Administrators and their staff for the period 17 October 2018 to 7 November 2018 which is the basis of the Resolution #1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are contained in Schedule B1.

Name	Position	\$/hours (ExGST)	Total Actual Hrs	Total	Assets		Creditors		Employees		Trade On		Investigations		Administration	
				\$	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs
Derrick Vickers	Appointee	720	23.10	16,632.00	1,368.00	1.90	8,568.00	11.90	504.00	0.70	2,520.00	3.50	-	-	3,672.00	5.10
Michael Owen	Appointee	720	0.10	72.00	-	-	-	-	-	-	-	-	-	-	72.00	0.10
Amanda Beattie	Director	625	8.80	5,500.00	-	-	4,500.00	7.20	-	-	-	-	1,000.00	1.60	-	-
Claire Pell	Director	625	23.10	14,437.50	375.00	0.60	8,187.50	13.10	1,062.50	1.70	250.00	0.40	-	-	4,562.50	7.30
Christopher Davies	Senior Manager	560	4.50	2,520.00	-	-	-	-	-	-	-	-	2,520.00	4.50	-	-
David Denman	Senior Manager	560	81.20	45,472.00	24,976.00	44.60	9,352.00	16.70	896.00	1.60	-	-	5,712.00	10.20	4,536.00	8.10
Eudo Hadde	Senior Manager	560	75.40	42,224.00	672.00	1.20	32,480.00	58.00	280.00	0.50	2,184.00	3.90	6,104.00	10.90	504.00	0.90
James Plowright	Senior Manager	560	34.50	19,320.00	840.00	1.50	18,480.00	33.00	-	-	-	-	-	-	-	-
Dimity Dwyer	Manager	510	65.60	33,456.00	5,202.00	10.20	11,679.00	22.90	1,938.00	3.80	12,240.00	24.00	1,836.00	3.60	561.00	1.10
Johnathon Ingold	Manager	510	0.80	408.00	-	-	-	-	408.00	0.80	-	-	-	-	-	-
Matt O'Connor	Manager	510	17.90	9,129.00	1,989.00	3.90	5,559.00	10.90	-	-	-	-	1,122.00	2.20	459.00	0.90
Natalie Phillips	Manager	510	5.00	2,550.00	-	-	-	-	-	-	-	-	2,550.00	5.00	-	-
Liam Barnes	Senior Consultant	425	32.50	13,812.50	1,487.50	3.50	1,360.00	3.20	-	-	-	-	10,667.50	25.10	297.50	0.70
Melissa Rekowski	Senior Consultant	425	16.30	6,927.50	-	-	5,865.00	13.80	170.00	0.40	-	-	-	-	892.50	2.10
Gigi Thallon	Senior Consultant	425	25.00	10,625.00	-	-	1,700.00	4.00	8,925.00	21.00	-	-	-	-	-	-
Jade Weller	Senior Consultant	425	35.20	14,960.00	-	-	14,705.00	34.60	-	-	-	-	-	-	255.00	0.60
Nicole Yeong	Senior Consultant	425	30.00	12,750.00	2,932.50	6.90	8,202.50	19.30	-	-	637.50	1.50	-	-	977.50	2.30
Marcus Bertram	Consultant	350	28.60	10,010.00	6,405.00	18.30	1,575.00	4.50	-	-	560.00	1.60	1,015.00	2.90	455.00	1.30
Mackenzie Kane	Consultant	350	36.00	12,600.00	3,080.00	8.80	1,575.00	4.50	1,890.00	5.40	595.00	1.70	2,870.00	8.20	2,590.00	7.40
Alison McLaughlin	Consultant	350	48.30	16,905.00	35.00	0.10	15,470.00	44.20	315.00	0.90	455.00	1.30	-	-	630.00	1.80
Justin Teruya	Consultant	350	3.00	1,050.00	-	-	1,050.00	3.00	-	-	-	-	-	-	-	-
Margo Rivers	Senior Bookkeeper	180	6.30	1,240.40	-	-	219.90	1.30	-	-	-	-	-	-	1,020.50	5.00
Jess Paris	Support Staff	180	1.20	216.00	-	-	-	-	216.00	1.20	-	-	-	-	-	-
<b>Total</b>			<b>602.40</b>	<b>292,816.90</b>	<b>49,362.00</b>	<b>101.50</b>	<b>150,527.90</b>	<b>306.10</b>	<b>16,604.50</b>	<b>38.00</b>	<b>19,441.50</b>	<b>37.90</b>	<b>35,396.50</b>	<b>74.20</b>	<b>21,484.50</b>	<b>44.70</b>
GST				<b>29,281.69</b>												
<b>Total (Including)</b>				<b>322,098.59</b>												
Average rate (excluding GST)				<b>486.08</b>		<b>486.33</b>		<b>491.76</b>		<b>436.96</b>		<b>512.97</b>		<b>477.04</b>		<b>480.64</b>

## Schedule A2

### Resolution #2: 8 November 2018 to the conclusion of the Administration

The below table sets out the expected costs for the major tasks likely to be performed by the Administrators and their staff for the period from 8 November 2018 to the conclusion of the Administration which is the basis of the Resolution #2 claim. More detailed descriptions of the tasks likely to be performed within each task area, matching the amounts below, are contained in Schedule B2.

Name	Position	\$/hours (Ex GST)	Total Actual Hrs	Total	Assets		Creditors		Employees		Trade On		Investigations		Administration	
				\$	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs
Derrick Vickers	Appointee	720	10.90	7,848.00	648.00	0.90	3,744.00	5.20	1,656.00	2.30	792.00	1.10	864.00	1.20	144.00	0.20
Michael Owen	Appointee	720	1.30	936.00	144.00	0.20	648.00	0.90	-	-	-	-	144.00	0.20	-	-
Amanda Beattie	Director	625	19.20	12,000.00	2,000.00	3.20	5,312.50	8.50	875.00	1.40	-	-	3,812.50	6.10	-	-
David Denman	Senior Manager	560	31.00	17,360.00	11,536.00	20.60	1,176.00	2.10	1,680.00	3.00	2,520.00	4.50	448.00	0.80	-	-
Eudo Hadde	Senior Manager	560	35.70	19,992.00	280.00	0.50	9,912.00	17.70	168.00	0.30	56.00	0.10	9,072.00	16.20	504.00	0.90
Dimity Dwyer	Manager	510	31.00	15,810.00	8,772.00	17.20	1,734.00	3.40	1,530.00	3.00	3,162.00	6.20	612.00	1.20	-	-
Liam Barnes	Senior Consultant	425	30.90	13,132.50	2,337.50	5.50	-	-	-	-	-	-	10,795.00	25.40	-	-
Gigi Thallon	Senior Consultant	425	20.00	8,500.00	2,635.00	6.20	2,167.50	5.10	3,187.50	7.50	-	-	-	-	510.00	1.20
Melissa Rekowski	Senior Consultant	425	18.60	7,905.00	-	-	6,460.00	15.20	1,445.00	3.40	-	-	-	-	-	-
Nicole Yeong	Senior Consultant	425	14.70	6,247.50	1,402.50	3.30	4,845.00	11.40	-	-	-	-	-	-	-	-
Mackenzie Kane	Consultant	350	32.80	11,480.00	2,765.00	7.90	-	-	1,260.00	3.60	350.00	1.00	7,105.00	20.30	-	-
Marcus Bertram	Consultant	350	37.90	13,265.00	7,105.00	20.30	3,570.00	10.20	-	-	350.00	1.00	1,925.00	5.50	315.00	0.90
Justin Teruya	Consultant	350	8.40	2,940.00	-	-	2,940.00	8.40	-	-	-	-	-	-	-	-
Alison McLaughlin	Consultant	350	23.20	8,120.00	-	-	7,490.00	21.40	-	-	350.00	1.00	-	-	280.00	0.80
Margo Rivers	Senior Bookkeeper	180	15.40	2,772.00	-	-	-	-	-	-	-	-	-	-	2,772.00	15.40
Nikki Archer	Support Staff	180	3.20	576.00	-	-	-	-	-	-	-	-	-	-	576.00	3.20
Jess Paris	Support Staff	180	6.20	1,116.00	-	-	-	-	-	-	-	-	-	-	1,116.00	6.20
<b>Total</b>			<b>335.20</b>	<b>150,000.00</b>	<b>39,625.00</b>	<b>85.80</b>	<b>49,999.00</b>	<b>109.50</b>	<b>11,801.50</b>	<b>24.50</b>	<b>7,580.00</b>	<b>14.90</b>	<b>34,777.50</b>	<b>76.90</b>	<b>6,217.00</b>	<b>28.80</b>
GST				<b>15,000.00</b>												
<b>Total (Including GST)</b>				<b>165,000.00</b>												
Average rate (excluding GST)				<b>447.49</b>		<b>461.83</b>		<b>456.61</b>		<b>481.69</b>		<b>508.72</b>		<b>452.24</b>		<b>215.87</b>

### Schedule A3

#### Resolution #3: from Commencement of Liquidation to 30 June 2019 (if applicable)

The below table sets out the expected costs for the major tasks likely to be performed by the Liquidators and their staff for the period from commencement of liquidation to 30 June 2019 which is the basis of the Resolution #3 claim. More detailed descriptions of the tasks likely to be performed within each task area, matching the amounts below, are contained in Schedule B3.

Name	Position	\$/hours (Ex GST)	Total Actual Hrs	Total	Assets		Creditors		Employees		Investigations		Administration	
				\$	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs
Derrick Vickers	Appointee	720	34.70	24,984.00	10,296.00	14.30	2,160.00	3.00	1,080.00	1.50	10,944.00	15.20	504.00	0.70
Michael Owen	Appointee	720	4.10	2,952.00	288.00	0.40	864.00	1.20	216.00	0.30	1,584.00	2.20	-	-
David Denman	Senior Manager	560	63.50	35,560.00	21,224.00	37.90	2,800.00	5.00	4,536.00	8.10	7,000.00	12.50	-	-
Eudo Hadde	Senior Manager	560	70.80	39,648.00	3,304.00	5.90	5,152.00	9.20	4,592.00	8.20	25,760.00	46.00	840.00	1.50
Dimity Dwyer	Manager	510	78.50	40,035.00	12,750.00	25.00	2,091.00	4.10	6,885.00	13.50	18,054.00	35.40	255.00	0.50
Liam Barnes	Senior Consultant	425	91.40	38,845.00	13,302.50	31.30	2,465.00	5.80	-	-	22,865.00	53.80	212.50	0.50
Gigi Thallon	Senior Consultant	425	76.20	32,385.00	4,335.00	10.20	6,587.50	15.50	7,650.00	18.00	13,175.00	31.00	637.50	1.50
Mackenzie Kane	Consultant	350	106.90	37,415.00	8,855.00	25.30	3,535.00	10.10	5,390.00	15.40	19,215.00	54.90	420.00	1.20
Marcus Bertram	Consultant	350	121.60	42,560.00	21,035.00	60.10	5,460.00	15.60	-	-	15,330.00	43.80	735.00	2.10
Margo Rivers	Senior Bookkeeper	180	18.50	3,330.00	-	-	-	-	-	-	-	-	3,330.00	18.50
Nikki Archer	Support Staff	180	6.50	1,170.00	-	-	-	-	-	-	-	-	1,170.00	6.50
Jess Paris	Support Staff	180	6.20	1,116.00	-	-	-	-	-	-	-	-	1,116.00	6.20
<b>Total</b>			<b>678.90</b>	<b>300,000.00</b>	<b>95,389.50</b>	<b>210.40</b>	<b>31,114.50</b>	<b>69.50</b>	<b>30,349.00</b>	<b>65.00</b>	<b>133,927.00</b>	<b>294.80</b>	<b>9,220.00</b>	<b>39.20</b>
GST				<b>30,000.00</b>										
<b>Total (Including GST)</b>				<b>330,000.00</b>										
Average rate (excluding GST)				<b>441.89</b>		<b>453.37</b>		<b>447.69</b>		<b>466.91</b>		<b>454.30</b>		<b>235.20</b>

***Appendix B – Table of major tasks for remuneration***



**Schedule B1**

**Resolution #1 from 17 October 2018 to 7 November 2018**

The below table provides a description of the work undertaken in each major task area for the period 17 October 2018 to 7 November 2018

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
<b>Assets</b> <b>101.50 hours</b> <b>\$49,362.00</b> <b>(excl GST)</b>	Sale of Business as a Going Concern	Preparing advertisements for insertion into local newspapers Preparing EOI forms and confidentiality agreements Preparing an information memorandum for each business unit Liaising with purchasers via telephone and email Prepare schedule of interested parties and relevant offers Updates to interested parties including timeline of information memorandum Providing information to interested parties Internal meetings to discuss/review offers received
	Plant and Equipment	Liaising with valuers, auctioneers and interested parties regarding valuations of equipment Reviewing asset listings and comparing books and records lists of assets against valuations Review finance leases to determine ongoing commitment amounts Organise security over plant and equipment Physical inspection of assets on various company sites Discussions with the directors regarding the plant and equipment Liaise with valuers regarding location and collection of assets Reviewing asset listings Maintain schedule of plant and equipment Obtaining equipment back from staff who either resigned or were made redundant Internal discussion with valuers and team members regarding valuations Requesting motor vehicle searches
	Sale of Real Property	Prepare searches for real property Liaise with management staff to identify details of property held Liaise with solicitors regarding sale of lease hold property Searches for potential agents for the purpose of requesting marketing submissions Collate and maintain schedule of real property Liaise with agents regarding property listings, marketing plan and potential sale value
	Assets subject to specific charges	Attend worksites to review assets possibly subject to charge Identify assets that may be subject to charge and required for ongoing trade Prepare and maintain schedule of assets subject to

Task Area	General Description	Includes
		charge
	Debtors	Prepare correspondence to debtors to obtain payment for outstanding accounts and answering queries Reviewing, assessing and maintaining debtors' ledgers Receipting monies from debtors in accounting software Liaising with accounts receivable team regarding collectability of outstanding debtors Discussions with debtors regarding expected payment dates of outstanding amounts
	Stock	Identify and secure stock Removal of remaining stock and waste materials Internal discussions with team members regarding sale plans for stock Identify legal owner(s) of steel remaining in warehouse
	Leasing	Liaising with owners/lessors in relation to the moratorium period Liaise with the company management staff regarding the leased premises Review of leasing schedules Discussions with solicitors regarding disclaiming leased premises'
<b>Creditors</b> <b>306.10 hours</b> <b>\$150,527.90</b> <b>(excl GST)</b>	Creditor Enquiries	Deal with creditor enquiries via the creditor hotline and email inbox Review and prepare initial correspondence to creditors and their representatives Prepare for and attend meeting with the QBCC regarding subcontractors that moved from Project Builders under Novation Deeds Consider reasonableness of creditor requests Obtaining legal advice on requests from creditors Compiling information requests by creditors Review documents provided by sub-contractors Discussions with utility providers regarding outstanding pre-appointment accounts Reviewing contractor charges, statutory demands and other demands received Review forms provided by subcontractors and prepare a summary Respond to QBCC information requests regarding trading status of Pink Lily Sands
	Retention of Title Claims	Search the PPS register to determine if creditors hold a PPSR Contact secured parties numerous times to locate copies of security documents Receive initial notification of creditor's intention to claim Forward notice to claimant regarding adjudication of claims Respond to requests from PMSI creditors to collect their assets Meeting secured parties on site to identify goods Notify PMSI creditors identified from PPSA register

Task Area	General Description	Includes
		<p>Liaise with solicitors regarding PMSI creditor's claims</p> <p>Provision of retention of title claim form to creditors</p> <p>Correspondence with PPSR parties regarding queries</p> <p>Receive completed retention of title claim forms</p> <p>Maintain retention of title file</p> <p>Meeting claimants on site to identify goods</p> <p>Internal meetings to discuss particular claims</p>
	Secured creditor reporting	<p>Preparing reports to secured creditor regarding status of the administration</p> <p>Responding to secured creditor's queries</p> <p>Correspondence with potential secured parties regarding their claim against the administration</p> <p>Review of bank guarantee listing provided by secured party</p> <p>Discussions with secured party regarding temporary excess approval for trading purposes</p> <p>Liaise with solicitors regarding the bank guarantees</p>
	Creditor reports	<p>Preparing first and second statutory reports to creditors</p> <p>Internal meetings to discuss strategy for preparation of the report to creditors for the first and second meeting of creditors</p> <p>Prepare mail out and email notification to creditors</p> <p>Requesting information from company staff and collating information received for inclusion in the report for the first and second meetings</p>
	Dealing with proofs of debt	<p>Receipting and filing POD received for the first meeting of creditors</p> <p>Entering POD amounts into accounting system</p> <p>Monitoring creditor hotlines for voice messages and emails and responding accordingly.</p>
	Meeting of Creditors	<p>Preparation of meeting notices, proxies and advertisements</p> <p>Forward notice of meeting to all known creditors</p> <p>Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</p> <p>Book venue for meeting</p> <p>Liaise with solicitor regarding issues surrounding voting</p> <p>Conducting first meeting of creditors</p> <p>Preparation of minutes of meetings</p> <p>Responding to stakeholder queries and questions immediately following meeting</p>
	Committee of Inspection	<p>Prepare notice to committee regarding their role and responsibilities</p> <p>Prepare listing of committee members</p> <p>Preparing for committee of inspection meeting</p>
<b>Employees</b> <b>38.00 hours</b> <b>\$16,604.50</b> <b>(excl GST)</b>	Employees enquiries	<p>Address employees regarding appointment and go forward position</p> <p>Telephone employees not present on site regarding appointment and go forward position</p> <p>Maintain employee hotline and email inbox</p> <p>Maintain employee enquiry files</p>
	Calculation of entitlements	<p>Prepare employee entitlement schedule</p> <p>Liaising with payroll staff regarding employee</p>

Task Area	General Description	Includes
		entitlements Reviewing employment awards, National Employment Standard, employee contracts and employee bargaining agreement Prepare notice to employees regarding their entitlements Internal meetings regarding specific employee entitlement issues Prepare mail out and email notification to employees regarding their entitlements Reviewing employee files and company's books and records including employee contracts Reconciling superannuation accounts Receive and prepare correspondence in response to employees objections to leave entitlements
	Workers compensation claims	Review insurance policies Notify WorkCover of appointment Liaise with WorkCover regarding current trading status
	Other employee issues	Correspondence with Centrelink Correspondence with support services for employees Preparing FAQ and Q&A for employee packs Answering various queries on site from employees
<b>Trade On</b> <b>37.90 hours</b> <b>\$19,441.50</b> <b>(excl GST)</b>	Trade on management – Pink Lily Sands	Liaising with suppliers to set up accounts and pay accounts Liaising with management on weekly basis to determine viability of ongoing trade and various issues surrounding that Attendance on site to inspect Pink Lily Sands site Reviewing and authorising purchase orders Monitoring trading performance by preparing regular cash flow analysis, reviewing daily sales reports and preparation of estimated costs for dredging Liaising with customers regarding ongoing trading position and supply going forward Liaise with customers regarding payment terms for supply during appointment period Reviewed updated invoice template for post-appointment sales Liaised with agents about conducting OH&S review on Pink Lily Sands site Liaised with payroll team regarding preparation of payroll Reviewed payroll and prepared payment form for weekly payroll Opening utility accounts
	Trade on management – General	Weekly attendance on site Weekly resourcing meetings for PwC staff allocations and site visits Opening utility accounts Liaised with payroll team regarding preparation of payroll Reviewed payroll and prepared payment form for weekly payroll
	Processing receipts and payments	Receiving funds from customers from each business unit Preparing and authorising payments

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
		Entering receipts, payments and purchase orders into accounting system
	Budgeting and financial reporting	Reviewing company's budgets and financial statements Meetings with management and staff to discuss trading position Determine trading position of the various businesses Prepare cash flow analysis for short term trading of Pink Lily Sands Internal meetings to discuss trading position
<b>Investigation</b> <b>74.20 hours</b> <b>\$35,396.50</b> <b>(excl GST)</b>	Conducting investigation	Meetings with management staff regarding company records Review of company books and records Conducting and summarising statutory searches Review of the RATA Prepare access to company servers and electronic financial records Review Deeds of Novation and discuss validity with solicitors Meeting with sub-contractors regarding building licences and other matters regarding the Company's conduct Review and preparation of company nature and history Review of intercompany loan accounts Preparation of comparative financial statements Reconciliation of company accounts Review of any potential voidable transactions Internal meetings regarding investigations into the affairs of the Company Investigation into the conduct of the directors and specific payments made Review of specific transactions and liaising with directors regarding certain transactions Investigations to identify indicators of insolvency and possible claims for insolvent trading Review of contract agreements with sub-contractors
	Forensic imaging	Liaising with Company IT staff to understand current assets, network configuration, locations of information and information backups Forensic imaging of information assets including email servers, clouds, file servers, database servers, Conducting backups of information preserved Secure storage of preserved information
<b>Administration</b> <b>44.70 hours</b> <b>\$21,484.50</b> <b>(excl GST)</b>	Appointment tasks	Preparing, reviewing and sending notification to various parties advising of the appointment Attending meeting with directors regarding appointment and strategy Preparing, issuing and lodging RATA's Setting up Insol and opening database Setting up hotlines for phone and email and recording voice messages Conducting bank sweeps Filing advertisements notifying of appointment
	Document maintenance/file review/checklist	Monthly administration reviews Scanning and filing of documents Updating checklists Scanning in mail received and saving into Maintaining filing within AMS database

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
	Insurance	Review and confirmation of adequacy of cover Identification of potential issues requiring attention of insurance specialists Correspondence with insurer regarding initial and ongoing insurance requirements Review of pre appointment insurance policy
	Bank account administration	Preparing correspondence opening accounts Requesting bank statements Correspondence with bank regarding specific transfers Make payments from banking platform Liaise with bank regarding pre appointment bank accounts
	ASIC Form	Preparing and lodging ASIC forms including 505 Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	Notification of appointment Correspondence with the ATO regarding appointment Collate running balance account
	Planning / Review	Discussions regarding status of administration Job planning for PwC staff allocation each week
	Books and records / storage	Review of records electronic storage Uploading Company books and records to AMS database Saving emails into AMS

## Schedule B2

### **Resolution #2 from 8 November to conclusion of Voluntary Administration**

The below table provides a description of the work undertaken in each major task area for the period 8 November 2018 to the conclusion of the Voluntary Administration

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
<b>Assets</b> <b>85.80 hours</b> <b>\$39,625.00</b> <b>(excl GST)</b>	Sale of Business as a Going Concern	Maintain schedule of interested parties and relevant offers Correspond with interested parties regarding the offer submitted and timeline of sale Internal meetings to discuss/review offers received Review marketing plans from agents and auctioneers Prepare sale documents and facilitate sale Implement sale strategy and facilitate marketing plan
	Plant and Equipment	Liaising with valuers, auctioneers and interested parties Review marketing plans Review and organise sale documents Liaise with auctioneers and request quotes for auction cost Maintain schedule of plant and equipment Correspond with interested parties regarding the offer submitted and timeline of sale Implement sale strategy and facilitate marketing plan
	Sale of Real Property	Liaise with agents regarding property listings, marketing plan and potential sale value Review offers and maintain schedule of interested parties Prepare sale documents and facilitate sale
	Assets subject to specific charges	Identify assets that may be subject to charge Prepare and maintain schedule of assets subject to charge Facilitate release of security for assets going to auction
	Debtors	Attend to debtor enquires Maintain debtor ledger Correspond with debtors regarding payment
	Stock	Facilitate sale of stock Removal of stock from the premises
<b>Creditors</b> <b>109.50 hours</b> <b>\$49,999.00</b> <b>(excl GST)</b>	Creditor Enquiries	Deal with creditor enquiries via creditor hotline and creditor inbox Maintaining creditor enquiry files Review documents provided by sub-contractors and discuss with internal team members
	Retention of Title Claims	Provision of retention of title claim form to creditors Correspondence with PIMSI creditors regarding queries Maintain retention of title file

Task Area	General Description	Includes
		Liaise with staff to facilitate release of assets that vest in the administration Prepare security review of particular secured party claims Correspond with creditors regarding determination of security review
	Secured creditor reporting	Preparing reports to secured creditor regarding the status of the administration Responding to secured creditor's queries Discussions with secured creditor regarding temporary excess Liaise with solicitors regarding secured party claims
	Creditor reports	Preparing second statutory report to creditors Collating investigation material into second report to creditors Review of second report to creditors Internal meetings regarding second report to creditors Preparing POD forms Prepare mail out and email notification to creditors
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend Enter the POD amount into accounting software
	Meeting of Creditors	Preparation of meeting notices, proxies and advertisements Forward notice of meeting to all known creditors Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting Book venue for meeting Liaise with solicitor regarding issues surrounding voting Conducting second meeting of creditors Preparation and lodgement of minutes of meetings with ASIC for first and second meeting of creditors
<b>Employees 24.50 hours \$11,801.50 (excl GST)</b>	Employees enquiries	Receive and follow up employee enquiries via the employee hotline and inbox Maintain employee enquiry files Review and prepare correspondence to employees and their representatives via facsimile, email and post Liaise with employees regarding their termination upon trading cessation
	Other employee issues	Dealing with other employee issues Seek legal advice on employee disputes



<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
<b>Trade On</b> <b>14.90 hours</b> <b>\$7,580.00</b> <b>(excl GST)</b>	Trade on management – Pink Lily Sands	Liaising with suppliers regarding finalising trading Liaising with management and staff Maintaining purchase order registry Monitoring trading performance Corresponding with customers regarding trading position Finalising trading position and wind down operations
	Processing receipts and payments	Entering receipts and payments into accounting system Preparing and authorising receipt vouchers Preparing and authorising payment vouchers Authorising purchase orders
<b>Investigation</b> <b>76.90 hours</b> <b>\$34,777.50</b> <b>(excl GST)</b>	Conducting investigation	Collection of company books and records and prepare of listing Reviewing company's books and records Preparation of comparative financial statements Preparation of deficiency statement Review of specific transactions and liaising with directors regarding certain transactions Investigations to identify indicators of insolvency and possible claims for insolvent trading Investigations into voidable transactions Review of the RATA Meeting with sub-contractors regarding building licences and other matters regarding the Company's conduct Review of intercompany loan accounts Preparation of comparative financial statements Reconciliation of company accounts Internal meetings regarding investigations into the affairs of the Company Investigation into the conduct of the directors Review of contract agreements with sub-contractors
	ASIC Reporting	Preparing statutory investigation reports

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
<b>Administration</b> <b>28.80 hours</b> <b>\$6,217.00</b> <b>(excl GST)</b>	Correspondence	Attend to general correspondence
	Document maintenance/file review/checklist	Filing of documents File reviews then manager reviews First month administration reviews Updating checklists
	Insurance	Review and confirmation of adequacy of cover Correspond with insurer regarding changes of asset position
	Bank account administration	Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 524/5062 and other forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	Preparing BAS Completing group certificates
	Planning / Review	Discussions regarding status of administration
Books and records / storage	Dealing with records in storage Sending job files to storage Dealing with electronic storage of files	

### Schedule B3

#### **Resolution #3 from commencement of Liquidation to 30 June 2019**

The below table provides a description of the work undertaken in each major task area for the period 21 November 2018 to 30 June 2019

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
<b>Assets</b> <b>210.40 hours</b> <b>\$95,389.50</b> <b>(excl GST)</b>	Sale of Business as a Going Concern	Liaising with purchasers via telephone and email Maintain schedule of interested parties and relevant offers Internal meetings to discuss/review offers received Review marketing plans Prepare and review of sale documents and provide same to solicitors Liaise with auctioneers regarding sale of assets by auction Prepare sale documents and facilitate sale
	Plant and Equipment	Liaising with valuers, auctioneers and interested parties Review marketing plans Review and organise sale documents Liaise with auctioneers regarding sale of plant and equipment via auction Prepare sale documents and facilitate sale
	Sale of Real Property	Liaise with agents regarding property listings, marketing plan and potential sale value Review offers from interested parties Prepare sale documents and facilitate sale
	Assets subject to specific charges	Identify assets that may be subject to charge Prepare and maintain schedule of assets subject to charge Facilitate release of security for assets going to auction
	Debtors	Attend to debtor enquires Maintain debtor ledger Correspond with debtors regarding payment
	Stock	Deal with sale of stock Removal of stock from the premises
<b>Creditors</b> <b>69.50 hours</b> <b>\$31,114.50</b> <b>(excl GST)</b>	Creditor Enquiries	Deal with creditor enquiries via the creditor's hotline and the creditor inbox Maintaining creditor enquiry files
	Retention of Title Claims	Provision of retention of title claim form to creditors Correspondence with PPSR parties regarding queries Maintain retention of title file Liaise with staff to facilitate release of assets that vest in the administration Prepare security review Correspond with creditors regarding determination of the security review
	Secured creditor reporting	Preparing reports to secured creditor Regular verbal updates to secured creditor Responding to secured creditor's queries
	Dealing with proofs of	Receipting and filing POD when not related to a

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
	debt	dividend Entering POD amounts into accounting software
	Meeting of Committee of Inspection	Notify committee members of meeting Regular updates to committee members Prepare report to the committee Preparation and lodgement of minutes of meetings with ASIC Preparing proposals to committee members Lodgement of outcome of proposals with ASIC
<b>Employees</b> <b>65.00 hours</b> <b>\$30,349.00</b> <b>(excl GST)</b>	Employees enquiries	Receive and follow up employee enquiries via telephone Maintain employee enquiry files Review and prepare correspondence to employees and their representatives via facsimile, email and post
	Employee dividend	Correspondence with employees regarding dividend Correspondence with ATO regarding SGC proof of debt Calculating dividend rate Preparing dividend file Advertising dividend notice Preparing distribution Receipting POD
	FEG	Correspondence with FEG Preparing notification spreadsheet Liaise with FEG regarding discrepancies reports and distributions to employees Review employee contracts to provide information regarding discrepancies Receipting POD from FEG
	Other employee issues	Deal with other employee issues Liaise with solicitors regarding employee disputes
<b>Investigation</b> <b>294.80 hours</b> <b>\$133,927.00</b> <b>(excl GST)</b>	Conducting investigation	Reviewing company's books and records Review of comparative financial statements Review of deficiency statement Review of specific transactions and liaising with directors regarding certain transactions Investigations into possible claims for insolvent trading Investigations into voidable transactions Meeting with sub-contractors regarding building licences and other matters regarding the Company's conduct Review and preparation of company nature and history Liaise with the QBCC regarding conduct of the company Review of sub-contractor agreements Maintenance of investigations file Review of intercompany loan accounts Reconciliation of company accounts Investigation into the conduct of the directors

<b>Task Area</b>	<b>General Description</b>	<b>Includes</b>
		Internal meetings regarding investigations into the affairs of the Company
	Litigation / Recoveries	Preparing brief to solicitors Liaising with solicitors regarding recovery actions Discuss potential actions to be taken with solicitors Determine the commerciality of the recovery of claims Attending to negotiations
	Examinations	Preparing brief to solicitor Liaising with solicitor(s) regarding examinations Liaising with solicitor regarding court applications Review of affidavits
	ASIC reporting	Preparing statutory investigation reports Liaising with ASIC
<b>Administration</b>	Correspondence	Attend to general correspondence
<b>39.20 hours</b>	Document maintenance/file review/checklist	Filing of documents First month, then six monthly administration review Updating checklists
<b>\$9,220.00</b>	Insurance	Review and confirmation of adequacy of cover following asset realisations Identification of potential issues requiring attention of insurance specialists
<b>(excl GST)</b>	Bank account administration	Bank account reconciliations Requesting bank statements Correspondence with bank regarding specific transfers
	ATO and other statutory reporting	Notification of appointment Preparing BAS Completing group certificates
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Dealing with records in storage Sending job files to storage

## ***Appendix 10 – ASIC – Insolvency information for directors, employees, creditors and shareholders***



ASIC

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

### List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

### Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets). The information sheets are also available from the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au). The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

**Important note:** The information sheets contain a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

**Glossary**

<b>Term</b>	<b>Definition</b>	<b>Term</b>	<b>Definition</b>
<b>Act</b>	the <i>Corporations Act 2001</i>	<b>ERV</b>	Estimated Realisable Value
<b>Administrators</b>	Derrick Vickers and Michael Owen as Joint and Several Administrators	<b>Externally Administered</b>	Has a Voluntary Administrator, Deed Administrator, Liquidator or Provisional Liquidator appointed
<b>AEST</b>	Australian Eastern Standard Time	<b>FEG</b>	Fair Entitlements Guarantee, which is administered by the Department of Jobs and Small Business
<b>AFP</b>	Australian Federal Police	<b>First Meeting</b>	Creditors meeting convened pursuant to Section 436E of the Act, held on 29 October 2018
<b>ARITA</b>	Australian Restructuring Insolvency and Turnaround Association	<b>FY</b>	Financial Year
<b>ASIC</b>	Australian Securities and Investments Commission	<b>GST</b>	Goods and Services Tax
<b>ATO</b>	Australian Taxation Office	<b>GSA</b>	General Security Agreement
<b>BAS</b>	Building Asset Services, a business unit of the Queensland Department of Housing and Public Works	<b>IPR</b>	Insolvency Practice Rules (Corporations) 2016
<b>the Company</b>	J M Kelly Builders Pty Ltd (Administrators Appointed), ACN 009 801 665	<b>JM Kelly Group</b>	The 16 companies in the Group, as listed in the Glossary
<b>Convening Period</b>	Ends 14 November 2018 in accordance with Section 439A(5) of the Act	<b>JMK Management</b>	J.M. Kelly Management Pty Ltd (In Liquidation), ACN 057 681 062
<b>COI</b>	Committee of Inspection	<b>k</b>	Thousands
<b>COPP</b>	ARITA's Code of Professional Practice	<b>NAB</b>	National Australia Bank, which has a General Security Agreement over the Company
<b>DIRRI</b>	Declaration of Independence, Relevant Relationships and Indemnities	<b>NES</b>	National Employment Standards
<b>DOCA</b>	Deed of Company Arrangement	<b>NTA</b>	Net Tangible Assets
<b>EBIT/ EBITDA</b>	Earnings before interest and tax/ Earnings before interest, tax, depreciation and amortisation	<b>MFR</b>	Minimum Financial Requirement



**Glossary**

<b>Term</b>	<b>Definition</b>	<b>Term</b>	<b>Definition</b>
<b>m</b>	Millions	<b>Second Report</b>	Second Report to Creditors prepared by the Administrators in accordance with IPR 75-225
<b>PAYG</b>	Pay As You Go Withholding Tax	<b>SGC</b>	Superannuation Guarantee Charge
<b>PMSI</b>	Purchase money Security Interest	<b>YTD</b>	Year to date
<b>POD</b>	Informal Proof of Debt Form		
<b>PPSR</b>	Personal Property Securities Register		
<b>Project Builders</b>	Collhart Investments Pty Ltd (In Liquidation), formerly JM Kelly (Project Builders) Pty Ltd.		
<b>Proxy</b>	Form 532 – Appointment of Proxy		
<b>PwC</b>	PricewaterhouseCoopers Australia		
<b>QBCC</b>	Queensland Building and Construction Commission		
<b>QCAT</b>	Queensland Civil and Administrative Tribunal		
<b>QPS</b>	Queensland Police Service		
<b>RATA</b>	Report As To Affairs		
<b>RTI Application</b>	Right to Information and Privacy Application		
<b>ROT</b>	Retention of Title		
<b>Second meeting</b>	Second or 'decision' creditor meeting at which creditors of the Company will determine its future		

**Glossary**

<b>Term</b>	<b>Definition</b>	<b>Term</b>	<b>Definition</b>
<b>JM Kelly Group companies – Externally Administered</b>	J M Kelly Builders Pty Ltd (Administrators Appointed), ACN 009 801 665	<b>JM Kelly Group companies – Not Externally Administered</b>	JMK Pastoral Co Pty Ltd, ACN 010 063 340
	Kawana Joinery Co. Pty Ltd (Administrators Appointed), ACN 010 109 038		Valcayle Pty Ltd, ACN 010 366 300
	J.M. Kelly Management Pty Ltd (In Liquidation), ACN 057 681 062		G.J. Murphy Holdings Pty Ltd, ACN 056 514 651
	BPM Cowrick Pty Ltd (In Liquidation), ACN 009 366 300		Anncorp Pty Ltd, ACN 056 637 328 ATF the Murphy Holding Trust
	Burns & Twigg Pty Ltd (In Liquidation), ACN 010 658 057		East Street Trust Durando Trust
	C.Q. Construction Management Pty Ltd (In Liquidation), ACN 010 181 923		G.J. Murphy Pty Ltd, ACN 009 800 588 ATF the GJ Murphy Family Trust
	Cajun Pty Ltd (In Liquidation), ACN 062 966 312		Ugolta Pty Ltd, ACN 010 261 159
	Central Electrics (Contracting) Pty Ltd (In Liquidation), ACN 010 543 987		
	Central Queensland Investments Pty Ltd (In Liquidation), ACN 009 769 180		
	Fitzroy Industries Pty Ltd (In Liquidation), ACN 009 801 496 ATF the Valcayle Trust		