



McGrathNicol

**Ipswich City Developments Pty Ltd (In Liquidation)
ACN 167 100 441
(ICD)**

Statutory Report to Creditors

**McGrathNicol
Partnership**

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We refer to our initial information for creditors dated 13 September 2018 in which we advised you of our appointment as liquidator and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation;
- call for creditors to lodge their claim against ICD; and
- advise you of the likelihood of a dividend being paid in the liquidation.

1 Update on the progress of the liquidation

1.1 Background

Jamie Harris and I were appointed as joint and several liquidators of ICD by the authorised representative for Ipswich City Council (**Council**), the holder of the whole of the issued shares in ICD, pursuant to a special resolution passed at a deemed meeting of members held on 30 August 2018 to place ICD into liquidation.

ICD redeveloped and on-sold land that it obtained from Council. As part of Council's strategy to wind-up ICD, ICD sold its five development projects prior to 31 December 2017. ICD also owned an investment property located at 101 Limestone Street, Ipswich, which was leased to another Council owned entity. The sale of 101 Limestone Street, Ipswich to Council was settled prior to the appointment of liquidators as part of Council's strategy to wind-up ICD. However, the title to the property was only legally transferred after the appointment.

1.2 Estimated assets

As at the date of liquidation, ICD had the following assets:

- \$590,314.41 and \$3,638.18 in its two respective bank accounts. A total of \$596,376.28 was transferred to a bank account opened by the liquidators on 12 September 2018. This amount included:
 - a total of \$593,952.59 collectively in ICD's pre-appointment bank accounts, as at the date of the Liquidators' appointment;
 - less \$1.10 in bank charges (incurred after the appointment date); and
 - \$2,424.79 in credit interest earned (deposited after the appointment date); and
- property located at 101 Limestone Street, Ipswich. The contract for the sale of the property from ICD to Council was settled on 14 August 2018, prior to the date of the liquidation. However, a Form to effect the transfer of the property from ICD to Council had been omitted as part of the sale process. Accordingly, the liquidators executed that Form on 12 September 2018, on behalf of ICD. Consideration paid for the sale of 101 Limestone Street was \$2 million plus GST. The final settlement amount of \$2,130,089.58 (including GST) was received into ICD's pre-appointment bank account on 14 August 2018.

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On 20 August 2018, a dividend transfer in the amount of \$2.5 million was paid to Council as ICD's shareholder.

ICD's balance sheet as at 30 August 2018 indicated that ICD holds no other assets.

1.3 *Estimated liabilities*

Set out below is a summary of ICD's estimated liabilities based on information provided by ICD and Council:

Estimated liabilities			
Unsecured creditors	Advised value (\$)	Liquidators' total estimate (\$)	RATA (\$)
Australian Taxation Office (ATO)	123,126.00	123,126.00	n/a
Council (amounts paid on behalf of ICD)	8,646.46	8,646.46	n/a
Total	131,772.46	131,772.46	n/a

ICD's creditors are as a result of the timing of the appointment of the liquidators and the receipt of creditor invoices. For administrative ease, Council paid amounts owing to certain known creditors of ICD directly. Accordingly, Council may have a claim against ICD for these amounts. The Liquidators understand that Council does not intend to submit a claim.

The ATO is excluded from creditors paid by Council on behalf of ICD and will be dealt with as part of the liquidation process and a formal claim has been submitted.

1.4 *Investigations*

The liquidators have conducted the following investigation into ICD's affairs and have identified the following:

- the Form for the transfer of ICD's property located at 101 Limestone Street, Ipswich had not been executed even though settlement had occurred. The Liquidators executed the Form on behalf of ICD; and
- reviewed ICD's management accounts as at 30 August 2018 and identified potential creditors. The Liquidators liaised with ICD and Council to arrange for Council to pay certain of ICD's creditor's on ICD's behalf.



2 Receipts and payment to date

Summarised below are details of all receipts and payments in the liquidation to date:

Receipts and payments for the period 30 August 2018 to 31 October 2018

Description	Amount (\$) (GST Inclusive)
Receipts	
Balance of pre-appointment CBA bank account	593,952.59
Loan - Ipswich City Council (payment of ICD's creditors)	8,596.96
Interest income	2,825.15
Total receipts	605,374.70
Payments	
Office of State Revenue - Land tax	(8,066.40)
Repairs and maintenance	(462.00)
Utilities	(68.56)
Bank charges	(1.10)
Total payments	(8,598.06)
Net receipt/(payment)	596,776.64

3 Likelihood of a dividend

Based on information available to us at this time, we consider it likely that a dividend of 100% will be payable to creditors with admitted claims in the liquidation.

We request that creditors who have not yet done so, now lodge a proof of debt. This formalises the record of your claim in the liquidation and is used to determine all claims against ICD.

If you are a creditor of ICD, with an amount owed to you at 30 August 2018, please complete and return the enclosed Proof of Debt Form (Form 535) (**POD**) via email dyakin@mcgrathnicol.com by the close of business on 10 December 2018.

4 Cost of the liquidation

As previously advised in our initial information to creditors, we have obtained approval, by an Ordinary Resolution passed at the Deemed Meeting of Members placing ICD into liquidation on 30 August 2018, for our estimated:

- remuneration of up to \$8,500 plus GST for carrying out the liquidation; and
- disbursements for this liquidation of up to \$500 plus GST.

Approval for further remuneration will be sought from ICD's shareholder in the amounts of:

- \$3,989.50 plus GST for time invested for the period 30 August 2018 to 2 November 2018. This amount is in addition to the time invested for the same period for the approved amount of \$8,500 plus GST (total amount invested for the period is \$12,489.50); and



- \$6,000 plus GST for future estimated remuneration for time invested for the period 3 November 2018 to completion.

5. What happens next?

We will proceed with the liquidation, which will include:

- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**);
- obtaining clearance from the ATO, including the preparation and lodgement of any outstanding income tax returns;
- adjudicating claims received from creditors in relation to their outstanding debts against ICD;
- paying the money owed to creditors; and
- distributing remaining assets to Council as ICD's shareholder.

If we receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, we will hold a meeting of creditors.

We may write to you again with further information on the progress of the liquidation.

We expect to have completed this liquidation within four months from the date of this report.

6. Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Danyal Yakin on (07) 3333 9874. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.

Dated: 26 November 2018



Anthony Connelly
Liquidator

Enclosures:

- 1** Annexure A - Proof of Debt (Form 535) and Guidance Notes
- 2** Annexure B – Notice Inviting Formal Proof of Debt or Claim (Form 534)
- 3** ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading

FORM 535

Corporations Act (2001)

**FORMAL PROOF OF DEBT OR CLAIM
(GENERAL FORM)**

To the Liquidators of Ipswich City Developments Pty Ltd (In Liquidation)

1. This is to state that the company was on 30 August 2018, and still is, justly and truly indebted to:

_____ *(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor)* for \$ _____ and _____ cents.

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....
Signature
Occupation:
Address

Dated

Proof of Debt Reference:

*Do not complete if this proof is made by the creditor personally.



Proof of Debt Guidance Notes

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

Directions for completion of a Proof of Debt

- 1 Insert the full name and address of the creditor.
- 2 Under "Consideration" state how the debt arose, for example "goods sold to the company on _____".
- 3 Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
- 4 Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

Information to support your claim

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

Trade Creditors

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

Guarantees/Indemnities

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

Judgment Debt

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

Deficiencies on Secured Debt

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

Loans (Bank and Personal)

- Executed loan agreement; and



- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

Tax Debts

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

Employee Debts

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

Leases

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

Australian Company Number: 167 100 441

Subregulation 5.6.48(3)

Corporations Act 2001

NOTICE INVITING FORMAL PROOF OF DEBT OR CLAIM

**Ipswich City Developments Pty Ltd
(In Liquidation)**

Take notice that creditors of the company, whose debts or claims have not already been admitted, are required on or before **10 December 2018** to prove their debts or claims and to establish any title they may have to priority by delivering or posting to me at my address a formal proof of debt or claim in accordance with Form 535 containing their respective debts or claims. If they do not they will be excluded from:

- a) the benefit of any distribution made before their debts or claims are proved or their priority is established; and
- b) objecting to the distribution.

Dated 26 November 2018



Anthony Connelly
Liquidator

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Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

Recoverable Transactions

Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

Unreasonable payments to directors

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

Insolvent trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains 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. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.