

MBJ:CR:D11  
C Roberts

3 December 2009

**PERTH**

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**SAS GLOBAL BALDIVIS LTD ACN 120 233 490  
(Administrators Appointed) (Receivers and Managers Appointed)  
("the Company")**

**CIRCULAR TO CREDITORS**

As previously advised, Andrew Saker, Darren Weaver and I were appointed Joint and Several Administrators of the abovenamed company on 6 November 2009 pursuant to Section 436A of the Corporations Act 2001.

On 18 November 2009, the first meeting of creditors was held and our appointment as Joint and Several Administrators was ratified.

A second meeting of creditors has been convened for **Friday, 11 December 2009 at the offices of Ferrier Hodgson, Level 26, BankWest Tower, 108 St Georges Terrace, Perth, Western Australia at 11.00am WST** for creditors to determine the future of the company.

For your information and assistance, the following notices, statements and reports are attached.

1. Notice of Meeting.
2. Administrator's report including a report on the Company's business, property, affairs and financial circumstances, the report contains a statement setting out my opinion about each of the following matters and my reasons for those opinions:
  - a. Whether it would be in the creditors' interests for the company to be wound up.
  - b. Whether it would be in the creditors' interests for the administration to end.
  - c. Whether the meeting should be adjourned for a period of up to forty-five (45) business days.
3. Remuneration Report.

ADELAIDE  
BRISBANE  
MELBOURNE  
SYDNEY  
HONG KONG  
JAKARTA  
KUALA LUMPUR  
MANILA  
MUMBAI  
SHANGHAI  
SINGAPORE  
TOKYO

Affiliated through  
Zolfo Cooper  
and  
Kroll Worldwide  
UNITED STATES  
UNITED KINGDOM



4. Informal Proof of Debt form for voting purposes. Any Informal Proof of Debt forms submitted for the purposes of the first meeting of creditors and accepted by the Chairperson of that meeting for voting purposes will be valid for this meeting.
5. Instrument of Proxy.

Should you have any questions in relation to this matter, please contact Sean Holmes or Kieran Chu of this office.

A handwritten signature in black ink, appearing to read 'Martin Jones', with a large, sweeping flourish underneath.

MARTIN JONES  
Joint and Several Administrator of  
SAS Global Baldivis Ltd

Encl.

## CORPORATIONS ACT 2001

NOTICE OF SECOND MEETING OF  
CREDITORS OF COMPANY UNDER ADMINISTRATIONSAS GLOBAL BALDIVIS LIMITED  
(ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)  
ACN 120 233 490

NOTICE is given that a meeting of the creditors of the company will be held at the at the offices of Ferrier Hodgson, Level 26, BankWest Tower, 108 St Georges Terrace, Perth, Western Australia on 11 December 2009 at 11.00am (WST).

A G E N D A

1. To receive a Statement about the company's business, property, affairs and financial circumstances.
2. To receive the report of the Administrator.
3. Questions from creditors.
4. For creditors to resolve:
  - a. that the company execute a Deed of Company Arrangement; or
  - b. that the administration should end; or
  - c. that the company be wound up; or
  - d. that the meeting be adjourned for up to forty-five (45) business days.
5. To fix the remuneration of the Joint and Several Administrators.
6. If the company is to execute a Deed of Company Arrangement, to fix the remuneration of the Deed Administrators.
7. If the company is wound up, to fix the remuneration of the Liquidators.
8. If the company is wound up, to consider appointing a Committee of Inspection.
9. If the company is wound up, to consider the destruction of the books and records at the conclusion of the winding up.
10. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Joint and Several Administrators by 4.00pm on the day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Corporations Regulations 5.6.28 and 5.6.32 (inclusive) or if a body corporate by a representative appointed pursuant to Section 250D.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the company in accordance with the Corporations Regulations and that claim has been admitted for voting purposes wholly or in part by the voluntary administrator.

DATED this 3<sup>rd</sup> day of December 2009.



MARTIN JONES  
Joint and Several Administrator of  
SAS Global Baldivis Ltd

**CORPORATIONS ACT 2001  
APPOINTMENT OF PROXY CREDITORS MEETING**

**SAS GLOBAL BALDIVIS LIMITED  
(ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)  
ACN 120 233 490**

\*I/\*We<sup>1</sup> .....  
of .....  
a creditor of SAS Global Baldivis Ltd, appoint<sup>2</sup> .....  
or in his absence as.....  
\*my/our \*(i) general OR \*(ii) special proxy<sup>3</sup> to vote at the meeting of creditors to be held on 11 December 2009 or at any adjournment of that meeting, to vote  
(i) on all matters arising at the meeting; **OR**  
(ii) on each of the following kinds of resolution in the manner specified:

<b>Resolution:</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
(a) The company be wound up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) The Administration end.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) The Administrators' remuneration for the period 6 November 2009 to 30 November 2009 be fixed in the sum of \$61,781.00 (exclusive of GST).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) The Administrators' further remuneration for the period 1 December 2009 to 11 December 2009 be fixed in accordance with the hourly rates of Ferrier Hodgson up to the sum of \$25,000.00 (exclusive of GST).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) If the company is placed into Liquidation: The Liquidators' remuneration be fixed in accordance with the hourly rates of Ferrier Hodgson up to the sum of \$80,000.00 (exclusive of GST) and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) If the company is placed into Liquidation: A Committee of Inspection be appointed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) If the company is placed into Liquidation: The books and records of the company be disposed of 12 months after the dissolution of the company or earlier at the discretion of the ASIC.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(h) The meeting be adjourned for a period not to exceed 45 business days..	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\* Strike out if inapplicable

<sup>1</sup> If a firm, strike out "I" and set out the full name of the firm.

<sup>2</sup> Insert the name, address and description of the person appointed.

<sup>3</sup> If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

I am an unsecured creditor and the total amount owed to me is \$.....

**OR**

I am a secured creditor and the total amount owed to me is \$.....

DATED this                    day of September 2009

.....  
Signature<sup>5</sup> of individual or person<sup>6</sup>  
authorised by corporate resolution to  
represent the corporation

OR    The Common Seal of<sup>4</sup>  
was hereunto affixed in the  
presence of

.....  
Director

.....  
Secretary

---

**This section is only relevant in the case of a proxy given by a blind or other person incapable of writing.**

CERTIFICATE OF WITNESS<sup>7</sup>

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.

DATED this                    day of September 2009

.....  
Signature of Witness

.....  
Description

.....  
Place of Residence

---

<sup>4</sup> The method of affixing the Common Seal is prescribed in Section 127(2) of the Corporations Act 2001 and, usually, the creditor corporation's constitution.

<sup>5</sup> The signature of the creditor is not to be attested by the person nominated as proxy.

<sup>6</sup> A corporation may only be represented by proxy or by an attorney appointed pursuant to Corporations Regulations 5.6.28 and 5.6.31A respectively or, by a representative appointed under Section 250D of the Corporations Act 2001. Copy of authority/power of attorney to be annexed.

<sup>7</sup> This certificate is to be completed only where the person giving it is blind.

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

SAS GLOBAL BALDIVIS LIMITED  
(ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)  
ACN 120 233 490

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)

**Notes:**

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- 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.

Proxies must be made available to the Joint and Several Administrators.

**SAS Global Baldivis Ltd  
ACN 120 233 490  
(Administrators Appointed)  
(Receivers and Managers Appointed)**



**Report by Administrators Pursuant to  
Section 439A(4)(a) of  
The Corporations Act 2001**

**Martin Jones**

**Andrew Saker**

**Darren Weaver**

3 December 2009



**FERRIER HODGSON**

LEVEL 26, 108 ST GEORGE'S TERRACE PERTH WA 6000

GPO BOX W2537 PERTH WA 6001

TELEPHONE 08 9214 1444 FACSIMILE 08 9214 1400

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## Glossary of terms

Abbreviation	Description
ABN	Australian Business Number
ACN	Australian Company Number
Act	The Corporations Act 2001
AGM	Annual General Meeting
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
Civil Group	The Civil Group WA Pty Ltd
Company	SAS Global Baldivis Ltd
DEWHA	Department of the Environment, Water, Heritage and the Arts
DIRRI	Declaration of independence, relevant relationships and indemnities
DOCA	Deed of Company Arrangement
DPM	Dennis, Price & Miller Consulting Civil Engineers
EPBC	Environmental Protection and Biodiversity Conservation
ERV	Estimated Realisable Value
IPA	Insolvency Practitioners Association of Australia
IPO	Initial Public Offering
LVR	Loan to Value Ratio
M	Millions
MRS Amendment	Metropolitan Region Scheme Amendment 1127/41 to effect the transfer of all properties subject to the amendment (including the Property) from "Rural" zoning to "Urban" zoning.
NAB	National Australia Bank Limited
NVA	No Value Attributed
Project	The development of the Property into subdivided residential lots.
Property	Lots 459 and 709 Baldivis Road and Lot 447 Telephone Lane, Baldivis
R&M	Receivers and Managers
ROE	Return on Equity
SGC	Superannuation Guarantee Charge
Statement	Directors' Statement about the Company's Business, Property, Affairs and Financial Circumstances
TPS Amendment	City of Rockingham Town Planning Scheme No. 2 Amendment to effect the transfer of the Property from "Rural" zoning to "Urban Development" zoning.
SGPGPL / Project Manager	SAS Global Property Group Pty Ltd ATF SAS Global Property Group Unit Trust
RPS	RPS Environmental Pty Ltd
WA	Western Australia
WaterCorp	Water Corporation
WAPC	Western Australian Planning Commission
WWTP	Wastewater Treatment Plant

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## **Listing of annexures**

<b>Annexure 1</b>	Administrators' Remuneration Report
<b>Annexure 2</b>	IPA - Creditor Information Sheet – Offences, Recoverable Transactions and Insolvent Trading
<b>Annexure 3</b>	Declaration of Independence, Relevant Relationship and Indemnities

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## 1. Executive summary

Andrew Saker, Darren Weaver, and Martin Jones were appointed Administrators of the Company on 6 November 2009. Creditors ratified our appointment as Administrators at the first meeting of creditors held on 18 November 2009. A Committee of Creditors was not formed at this meeting.

Brian McMaster and Mark Mentha of KordaMentha were appointed Joint and Several R&M on 9 November 2009 by the NAB pursuant to the duly registered fixed and floating charged in favour of the NAB.

At the date of our appointment, the Company owned 50.7 hectares of land located on the corner of Millar Road and the Kwinana Freeway, Baldivis, Western Australia. A combination of debt and equity was used to fund the acquisition of this property.

Creditors will determine the Company's future at a second meeting of creditors convened for **Friday, 11 December 2009** to be held at **the offices of Ferrier Hodgson, Level 26, 108 St Georges Terrace, Perth 6000, Western Australia** at **11.00am WST**.

We have carried out investigations into the Company's affairs to assist in formulating our opinion as to what is in the creditors' best interests. At the date of this report, no DOCA proposal has been received, and accordingly no resolution to execute a DOCA will be put to creditors. Should this situation change, creditors will be advised at or prior to the meeting.

The main issues arising from our investigations into the Company's affairs are:

- Issues surrounding the initial raising of equity funds from creditors;
- The rezoning approval from "Rural" to "Urban Deferred" instead of "Urban" played a critical role in not only reducing the value of the Property but also impacting the Company's ability to generate cashflow through presales; and
- Subsequent to the breach of loan covenants to the NAB, the Company sought to raise further working capital without any success, leaving it with no other alternative but to resolve to appoint Administrators on 6 November 2009.

We note that, during the course of the Administration, we have made preliminary enquiries into the Company's affairs and the various transactions the Company has entered into, however any future appointed liquidator would be required to conduct a more comprehensive investigation and consider action in respect of recoveries (if any).

We are of the opinion that, for the reasons set out in this report, the Company should be wound up and we advise that the ultimate return to ordinary unsecured creditors will be dependent on the ultimate sale price achieved on the Property.

## 2. Introduction

### 2.1 Purpose of appointment and this report

As noted above, Andrew Saker, Darren Weaver, and Martin Jones were appointed Administrators of the Company on 6 November 2009, pursuant to Section 436A of the Act.

The purpose underlying an Administrator's appointment is to allow for independent control and investigation of an insolvent company's affairs. During the administration period, creditors' claims are put on hold. We are required to provide creditors with information and recommendations to assist creditors to decide upon the company's future.

Section 439A(4) of the Act explains the purpose of an Administrator's report in providing that the notice (of second meeting) must be accompanied by a copy of:

- 
- (a) *A report by the Administrator about the company's business, property, affairs and financial circumstances; and*
- (b) *A statement setting out the Administrator's opinion about each of the following matters:*
- (i) Whether it would be in the creditors' interests for the company to execute a Deed of Company Arrangement;*
  - (ii) Whether it would be in the creditors' interest for the administration to end;*
  - (iii) Whether it would be in the creditors' interest for the company to be wound up;*
- and also setting out:*
- (iv) His or her reasons for those opinions; and*
  - (v) such other information known to the administrator as will enable the creditors to make an informed decision about each matter covered by subparagraph (i), (ii) or (iii); and*
- (c) *If a Deed of Company Arrangement is proposed – a statement setting out details of the proposed deed.*

In the available time, we have undertaken the investigations detailed in section 7 of this report. These investigations have enabled me to form an opinion about the Company's future. Our opinion is set out in section 10 of this report.

## **2.2 First meeting of creditors and committee of creditors**

Creditors attended the first meeting of creditors held at the offices of Ferrier Hodgson, Level 26, St George's Terrace, Perth, Western Australia on 18 November 2009 at 11.00am WST. At that meeting, creditors ratified our appointment as Administrators of the Company. Creditors resolved not to appoint a Committee of Creditors.

## **2.3 Second meeting of creditors**

Pursuant to Section 439A of the Act, the second meeting of creditors of the Company is convened for **Friday, 11 December 2009 at the offices of Ferrier Hodgson, Level 26, 108 St Georges Terrace, Perth 6000, Western Australia at 11.00am WST**. At the second meeting, creditors will decide the Company's future in voting on one of the following options:

- That the administration should end and control of the Company revert to its directors; **or**
- That the Company should be wound up; **or**
- That the Company execute a DOCA.

Creditors are also able to resolve that the meeting be adjourned for a period up to 45 business days.

## **2.4 Non-disclosure of certain information**

There are sections of this report wherein we considered it inappropriate to disclose certain information to creditors. Such information includes valuation of the property, identity and nature of the interested parties and their interest and commercially sensitive prospective financial information (for example, projections/forecasts).

We fully recognise the need to provide creditors with complete disclosure of all necessary information relating to the Company. However, we believe some information is the subject of too high a level of uncertainty to be capable of providing relevant information to creditors at this stage.

## **2.5 Declaration of independence, relevant relationships and indemnities**

Prior to our appointment we undertook a proper assessment of the risks to our independence. This assessment identified no real or potential risks to our independence. We were not aware of any reasons that would prevent us from accepting this appointment. A copy of our DIRRI that was tabled at the first meeting of creditors is attached at **Annexure 3**.

---

### 3. Company information

#### 3.1 Statutory information

A search of the ASIC database revealed the following information.

##### 3.1.1 Incorporation date and registered office

The Company's incorporation date is 16 June 2006. The Company's registered office is listed as 7 Ventnor Avenue, West Perth, Western Australia 6005.

##### 3.1.2 Company officers

As at the date of our appointment, the directors and officers were as follows:

Name	Role	Appointment Date	Cessation Date
Anthony John Beamish	Director	16/06/2006	Current
Philip Anthony Meagher	Director	22/09/2006	Current
Sam Rizzo	Director	25/03/2009	Current
Umberto Bruno Gianotti	Director	19/03/2009	25/03/2009
Kenneth Wayne Wybrow	Director	22/09/2006	25/02/2009
Anthony John Beamish	Secretary	16/06/2006	Current

A search of the National Personal Insolvency Index maintained by the Insolvency Trustee Service, Australia, shows that the Company's directors are not bankrupt or subject to a Personal Insolvency Agreement under Part X of the Bankruptcy Act 1966.

##### 3.1.3 Shareholders

The Company is an unlisted public company limited by shares. Given the privacy issues surrounding the share register, we consider it appropriate not to report details of same here.

##### 3.1.4 Registered chargeholder

The NAB holds a registered Fixed and Floating Charge (ASIC number 1399112) over the assets and undertakings of the Company. The charge was created on 27 December 2006 and registered with ASIC on 3 January 2007.

In addition, the Property is secured by way of a specific mortgage over the Property and a joint and several directors' guarantee up to a limit of \$4M.

The debt owed to NAB as at 6 November 2009 is approximately \$19.48M.

We undertook a review of the bank's charge and determined it to be, prima facie, valid.

In accordance with the provisions of Section 450A(3) of the Act, we notified the NAB of the appointment of Administrators and advised of their right to enforce their security within 13 business days after our appointment.

As previously advised, the NAB appointed Mark Mentha and Brian McMaster of KordaMentha as Joint and Several R&M over the company on 9 November 2009.

##### 3.1.5 Winding up Applications

There were no winding up applications outstanding as at the date of our appointment.

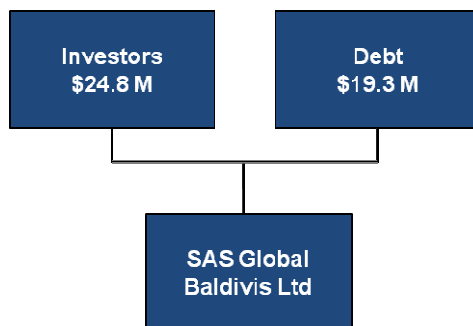
### 3.2 Company history

Incorporated on 16 June 2006 in WA, the Company was first known as SAS Global Mandurah 2 Pty Ltd. The Company changed its name to SAS Global Baldivis Pty Ltd on 22 September 2006. Subsequently, the Company changed its name to SAS Global Baldivis Ltd on 16 November 2006. The Company's registered office at the date of our appointment is at 7 Ventnor Avenue, West Perth, WA.

The Company was incorporated for the sole purpose of purchasing and developing a 50.7 hectare property in Baldivis, WA (which is approximately 35 km south of Perth). It was the Company's intention to develop the Property (subject to various governmental approvals) by subdividing the land into 731 lots (640 lots initially) for resale.

The Company obtained funding in the form of equity raised from public share offerings with a combination of debt facility to fund the acquisition of the Property. The total acquisition price of the Property was approximately \$34M (including GST).

For ease of reference, we table below a diagram showing the funding structure for the company:

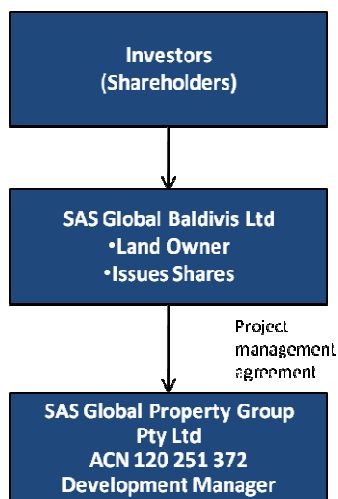


For further details regarding the application of the funds received, please refer to section 7.5.2 of this report

Development work on the Project to date has resulted in it being designated "Urban Deferred" zoning. The major outstanding approvals matter to be resolved to achieve an 'Urban' designation is the availability of a WWTP with suitable capacity to process the wastewater from the development. As at the date of our appointment the Company was still continuing to progress this approval.

The Company has no employees and via a management agreement appointed SPGPL as development manager for the project. SPGPL would then engage accountants, lawyers, consultants and other suitable qualified person for administrative support.

The Company's structure and agreements is summarised in the diagram below.



### 3.3 Decision to appoint Administrators

Please refer to the chronology in section 7.5 of this report for comprehensive detail of events surrounding the appointment of Administrators.

In view of the Company's financial position at 6 November 2009 and the lack of funding alternatives available, the directors formed the view that the Company was likely to become insolvent and the directors then resolved to appoint Administrators to the Company

On Friday, 6 November 2009, Martin Jones, Darren Weaver and Andrew Saker were appointed as Joint and Several Administrators of the Company.

For further information, please see section 5.2 on the causes of failure of the Company.

## 4. Historical financial information

### 4.1 Preparation of financial statements

The Company's financial statements were prepared up to 30 June 2009. Moore Stephens audited the financial statements up to the year ended 30 June 2009.

The Company also engaged JGC Accounting and Financial Services Pty Ltd to prepare various management accounts and reports on a monthly basis.

At section 7.9 of this report, we comment on the adequacy of the Company's books and records.

### 4.2 Profit and loss statement and preliminary analysis

Set out below is a summary of the Company's profit and loss statement for the past three (3) financial years and to the end of October 2009 together with our preliminary analysis.

<b>Profit and Loss Summary</b>	<b>30-Jun-07</b>	<b>30-Jun-08</b>	<b>30-Jun-09</b>	<b>31-Oct-09</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Sales Revenue	Nil	Nil	Nil	Nil
Interest Received	21,177	89,816	103,417	4,918
<b>Total Revenue</b>	<b>21,177</b>	<b>89,816</b>	<b>103,417</b>	<b>4,918</b>
<b>Operating Expenses</b>				
Write down of property	Nil	Nil	(18,776,616)	(485,635)
Administrative Expenses	(134,577)	(98,231)	(148,041)	(38,283)
Depreciation & Amortisation	(2,256)	(3,212)	(3,212)	(810)
<b>Total Operating Expenses</b>	<b>(136,833)</b>	<b>(101,443)</b>	<b>(18,927,869)</b>	<b>(524,728)</b>
<b>Net Profit</b>	<b>(115,656)</b>	<b>(11,627)</b>	<b>(18,824,452)</b>	<b>(519,810)</b>

In respect of the above, we make the following comments:

- The Company did not record any sales revenue or profit from the date of incorporation on 16 June 2006 to the date of our appointment as it had yet to finalise its development opportunities / activities which were to be a source of income;
- The write down of property in June 2009 and October 2009 was due to the accounting treatment for the valuation received in early 2009;
- Administrative expenses includes legal and professional fees, accounting expenses and bank charges; and
- Income tax liabilities have not been taken into consideration in the above analysis.

For completeness, we note that the accounts above for the year ending 30 June 2007, 30 June 2008 and 30 June 2009 are based upon the accounts audited by Moore Stephens. The accounts for the period ending 31 October 2009 are based upon unaudited accounts as prepared by JGC. Accordingly, we express no comment in relation to the accuracy thereof.

### 4.3 Balance sheet and preliminary analysis

Balance Sheet	30-Jun-07	30-Jun-08	30-Jun-09	31-Oct-09
	\$	\$	\$	\$
<b>Assets</b>				
Current assets	493,605	2,175,849	826,092	250,084
Non-current assets	34,463,603	36,131,504	19,588,898	19,577,154
<b>Total assets</b>	<b>34,957,208</b>	<b>38,307,353</b>	<b>20,414,990</b>	<b>19,827,238</b>
<b>Liabilities</b>				
Current liabilities	1,773,959	18,292,000	19,324,089	19,536,183
Non-current liabilities	15,639,456	Nil	Nil	1,461
<b>Total liabilities</b>	<b>17,413,415</b>	<b>18,292,000</b>	<b>19,324,089</b>	<b>19,537,644</b>
<b>NET ASSETS</b>	<b>17,543,793</b>	<b>20,015,353</b>	<b>1,090,901</b>	<b>289,594</b>
<b>Equity</b>				
Contributed Equity	17,659,449	20,142,636	20,042,636	20,042,636
Accumulated (Losses)	(115,656)	(127,283)	(18,951,735)	(19,753,042)
<b>Total Equity</b>	<b>17,543,793</b>	<b>20,015,353</b>	<b>1,090,901</b>	<b>289,594</b>

In respect of the above, we make the following comments:

- The greater amounts of current assets in the year ending June 2008 reflect the high amounts of cash at bank.
- The substantial decrease in non-current assets in 2009 was a result of the write down of property in accordance with the accounting methods.
- The \$1,461 current liability in October 2009 is a loan from the SAS Global Property Group Unit Trust.
- As at the end of the 2008 and 2009 financial years, the Company was in breach of its loan covenants as its total bank debt exceeds 55% of the market value of the property, giving rise to a breach of the LVR which was not rectified. Accordingly this interest bearing liability has been reclassified as a current liability.

For completeness, we note that the accounts above for the year ending 30 June 2007, 30 June 2008 and 30 June 2009 are based upon the accounts audited by Moore Stephens. The accounts for the period ending 31 October 2009 are based upon unaudited accounts as prepared by JGC. Accordingly, we express no comment in relation to the accuracy thereof.

## 5. Statement by directors

### 5.1 Summary

Section 438B of the Act requires the directors to give an Administrator a statement about the company's business, property, affairs and financial circumstances. We received the directors' statement on 27 November 2009.

In the Statement, the directors detailed the Company's assets and liabilities at book value and ERV.

The following table summarises the assets and liabilities described in the directors' statement.

Statement as at 6 November 2009	Report Reference	Cost or Net Book Value \$	Directors' ERV \$	Administrators' ERV High \$	Administrators' ERV Low \$
<b>Assets:</b>					
Cash at bank	5.1.1	48,128	48,128	Nil	Nil
<b>Sub total</b>		48,128	48,128	Nil	Nil
Assets subject to specific charges	5.1.2	32,000,000	20,000,000	NVA	NVA
Less amounts owing under charges	5.1.2	(19,401,000)	(19,401,000)	(19,480,000)	(20,000,000)
<b>Available to unsecured creditors</b>		12,647,128	647,128	NVA	NVA
Ordinary unsecured creditor claims	5.1.3	(375,000)	(375,000)	(375,000)	(1,201,924)
<b>Estimated Surplus/(Deficiency)</b>		<b>12,272,128</b>	<b>272,128</b>	<b>NVA</b>	<b>NVA</b>

The Administrators have not audited the Company's records or the book values. The Administrators have provided estimated realisable values with respect to the Company's liability position only. The Administrators have not disclosed their estimated realisable value for assets for reasons detailed below.

The above schedule should not be used to determine the likely return to creditors as a number of realisable values are based on the Company's records and remain subject to the review of the Administrators and, in particular:

- The Administrators are not in a position to confirm (or otherwise) the estimated realisable values ("ERV") as the Administrators have not commissioned any valuations given the appointment of the R&M.
- The value of creditor claims remains subject to change as further claims may be received and require further adjudication.
- The abovementioned estimated position does not provide for possible trading losses, capital costs or the professional costs associated with the Administration process.

In respect of the above, we make the following comments:

### 5.1.1 Cash at bank

The Company operated two (2) bank accounts with NAB with confirmed balance, as summarised below:

Bank Account	Amount (\$)
Baldivis Investment A/c	0.00
Baldivis Replacement A/c	(147,683)
<b>Total</b>	<b>\$(147,683)</b>

The directors have indicated in the statement that there was approximately \$48,128 cash at bank as at the date of our appointment. The amounts referred to by the Directors is considered and dealt with further at Section 7.10.1 below.

### 5.1.2 Assets subject to specific charges and amounts owing to the secured creditor

The directors' statement discloses the property at Baldivis (being Lots 459 and 709 Baldivis Road and Lot 447 Telephone Lane, Baldivis) as subject to a specific charge.

The Property is secured and guaranteed by a combination of the following:

- Specific mortgage over the Property;
- Fixed and floating charge over the Company; and

- Joint and several directors' guarantee granted by Anthony Beamish and Philip Meagher in the amount of \$4M.

The Company maintained a fixed facility of \$13M and floating component of \$6.3M. The floating component was drawdown to nearly 95% of its limit at the date of our appointment.

The debt owed to NAB as at 6 November 2009 is approximately \$19.48M.

The NAB would be entitled to prove as an unsecured creditor for any shortfall following a sale of these secured assets.

### 5.1.3 Ordinary unsecured creditors

Accounting for informal proofs of debt received to date and the Company's records, we estimate the Company's liability to unsecured creditors at approximately \$1.2M. A summary of the claims received to date appears below:

Unsecured creditors	Amount (\$)
SGPGPL	375,000
Emerson Stewart Limited	5,000
Mendelawitz Morton	1,924
The Graham Family Trust	820,000
<b>Total</b>	<b>\$1,201,924</b>

The Graham Family Trust lodged a claim as an unsecured creditor against the company for a breach of the Trade Practices Act and the Fair Trading Act, claiming that he was misled into the purchase of shares in the company. We note that although the amount claim by the Graham Family Trust is included in the table above, we have yet considered the merits of this claim and have not adjudicated upon any claims received. For further details regarding the claim from the Graham Family Trust, please see section 7.11.7.1 of this report.

We note that table above provides only an indicative value of the unsecured creditors' claims. These claims are subject to the receipt and adjudication of final proofs of debt from creditors.

### 5.1.4 Related entities

The Statement has disclosed an amount owed by the Company to the following related entity:

Related Entity	\$
SGPGPL	375,000
<b>Total</b>	<b>\$375,000</b>

SGPGPL, the property manager of the project, lodged an informal proof of debt for voting purposes at the first meeting of creditors in the amount of \$375,000 for breach of the project management agreement. We advise that we have not adjudicated on this proof or any other unsecured creditor proofs. We note that the amount of the related party proof was included in the ordinary unsecured creditor claims reported in 5.1.3.

### 5.1.5 Omissions from Statement

Save for our previous comments regarding specific disclosures in the Statement, there are no identified material omissions from the directors' Statement.

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## 5.2 Causes of failure / Explanation for current financial position

The directors' explanation for the Company's current financial position is as follows:

- The directors first realised that the Company should go into voluntary administration on the day of the appointment being 6 November 2009 due to the failure of recapitalisation proposals that were to be put to shareholders; and
- The directors were asked by the secured lender to bring the LVR back to within the lender's covenants, an issue that rose by virtue of the last valuation on the property.

Our preliminary view is that the Company failed because of:

- Lack of adequate working capital;
- Additional costs incurred as a result of the delays in obtaining the necessary approval to rezone the Property from "Rural" to "Urban"; and
- Unfavourable conditions in the property market, leading to a decrease in the value of the Company's main asset, thus breaching the LVR's set by the NAB.

In view of the above, given that the approval to rezone the property did not occur the Company could not generate sufficient cashflow through sales and accordingly sought to recapitalise the Company through an IPO. This option was generally not well received and accordingly the directors and their adviser could identify no other option but to appoint Administrators to the Company.

## 6. Trading by Administrators

### 6.1 Overview

The Administrators assumed control of the Company's business upon appointment, took control of the Company's bank account and requested that the directors provide access to the books and records of the Company. We then undertook a preliminary review of the company's operations from those records.

There has been no specific issues regarding trading since our appointment. We note that given the R&M's appointment on 9 November 2009, the R&M has been responsible for the Company's operations generally.

Given the appointment of the Administrators and that the directors' powers are suspended during the Voluntary Administration process, the Joint and Several Voluntary Administrators:

- Chaired the AGM of the Company held at the Hyatt Regency Perth, 99 Adelaide Terrace Perth, WA on 9 November 2009 at 3.00pm; and
- Considered it inappropriate for the proposed resolutions to be put to shareholders. Accordingly, no resolutions were put to shareholders and voted upon at the AGM.

At the AGM, Martin Jones gave an overview of the Voluntary Administration process and the Company's affairs. Martin Jones also fielded questions from shareholders. The directors of the Company were not present at the AGM.

### 6.2 Summary of receipts and payments

A summary of the Administrators' receipts and payments for the period 6 November 2009 to 3 December 2009 is included within Part B of the Administrators' Remuneration Report attached as Annexure 1.

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## 7. Statutory investigations

### 7.1 Nature and scope of review

The Act requires an administrator to carry out preliminary investigations into a company's business, property, affairs and financial circumstances, and the conduct of its directors, related parties and advisers in the period prior to our appointment.

The investigations that an administrator is required to undertake centre on identifying and investigating transactions entered into by each company that a liquidator might seek to void or otherwise challenge where the company is wound up. Investigations allow an administrator to advise creditors what funds might become available to a liquidator such that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the company.

Any funds recovered would be available to the general body of unsecured creditors, including secured creditors but only to the extent of any shortfall incurred after realising their security.

A liquidator may recover funds from each type of transaction detailed in the Creditor Information Sheet described in **Annexure 2** of this report. A deed administrator does not have recourse to these voidable transactions. A liquidator may also recover funds through other avenues; for example, through action seeking compensation for insolvent trading or breach of director duties.

An administrator is not obliged to carry out investigations to the same extent as a liquidator. A liquidator may require many months of investigation and conduct public examinations before forming a concluded view on recovery action. We have investigated matters to the extent possible in the time available, and have noted with specific reference below where we believe further investigation is desirable.

The administrators' knowledge of the company's affairs comes principally from the following sources (to the extent they have been available):

- (a) Communications with the company's major unsecured creditors regarding the nature and amount of the debts owed. Those creditors confirmed that the details disclosed by the company are substantially correct.
- (b) Communications with the company's shareholders and their representatives regarding the nature and amount of the debts owed, the circumstances in which those funds were invested and the company's dealings with them;
- (c) Communications with the secured creditors regarding the nature and amount of the debt owed;
- (d) The directors' Statement and a detailed questionnaire concerning the company's affairs prepared by the directors;
- (e) Discussions with the directors, their advisors and representatives of the project manager (SGPGPL);
- (f) A search of the ASIC records relating to the company and any related entities;
- (g) Searches obtained from the Department of Transport and Landgate;
- (h) Audited annual reports published by the company, and other significant information disclosed to investors;
- (i) An examination of the company's books and records including its financial statements and management accounts (to the extent that such were made available to us).

An administrator has an obligation to the company to consider the conduct of directors and other parties, and the interests of that Company. We have included an overview of the solvency and investigations into the Company as outlined below.

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## 7.2 Areas of Investigation

The key areas of our investigations have included the following:

- (a) The reasons for the failure of the company;
- (b) Assessment of the solvency of the company and consideration as to whether insolvent trading by the Directors of the Company has occurred;
- (c) Consideration of the decisions and duties of the Directors of the company to identify any potential instances of negligence or breaches of duty, including review of:
  - (i) The initial purchase of the Property, including the contract that was entered into with particular respect to the Deed of Assignment and subsequent Deed of Acknowledgment of Debt (both referred to in Section 5.75 of this Report;
  - (ii) The application and use of shareholder funds;
  - (iii) The causes for the delays of the project including any external factors which may have influenced the same;
  - (iv) The validity of project management fees received by SGPGPL; and
  - (v) A thorough review of any related party transactions entered into by the Company.
- (d) A review of whether the Company has entered into any voidable transactions that would be available to a liquidator.

## 7.3 Solvency of the Company

A precursor to the recovery of funds by a liquidator through the voiding of certain transactions or through other legal action, such as seeking compensation from directors for insolvent trading, is establishing the Company's insolvency at the relevant time.

Establishing insolvency is a complex matter due in part to the complexity of corporate financial transactions and the lack of clear prescriptive legal authority on the indicia of insolvency. Notwithstanding, there are two primary tests used in determining a company's solvency, at a particular date; namely:

- Balance sheet test; and
- Cash flow or commercial test.

The Courts have widely used the cash flow test in determining a company's solvency at a particular date.

Section 95A of the Act also contains a definition of solvency. That definition reflects the commercial test in stating that a person is solvent if *"the person is able to pay all the person's debts as and when they become due and payable"*. A company that is not solvent is insolvent.

However, the strict application of the cash flow test is not the sole determinant of solvency. Determining solvency derives from a proper consideration of a company's financial position in its entirety and in the context of commercial reality. Relevant issues include, but are not limited to the following:

- (a) The degree of illiquidity. A temporary lack of liquidity is not conclusive of insolvency;
- (b) Regard should be had to:
  - Cash resources; and
  - Monies available through asset realisations, borrowings against the security of assets or equity/capital raising.

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- (c) All of a company's assets might not be relevant when considering solvency. For example, where a company proposes selling assets which are essential to its business operations, the proceeds of those assets should not be taken into account. Further, some assets may not be realisable at all or realisable for sufficient value or in time to ensure that debts are paid when due;
  - (d) The voluntary and temporary forbearance by creditors not to enforce payment terms; and
  - (e) It is not appropriate to base an assessment of whether a company can meet its liabilities as and when they fall due on the prospect that a company might trade profitably in the future.

In summary, it is a company's inability using such resources as are available to it through the use of its assets, or otherwise, to meet its debts as they fall due, which indicates insolvency.

#### **7.4 Director's liability**

Insolvent trading is governed by Division 3 of Part 5.7B of the Act and imposes on directors individually a statutory duty to prevent insolvent trading by corporations.

Section 588G(2) of the Act provides that a director who fails to prevent a company from incurring a debt at a time when the director is aware that there are reasonable grounds for suspecting that the company is insolvent, or will become insolvent by incurring that debt or debts including that debt, contravenes section 588G of the Act. This may result in a civil penalty under the Act. For example, compensation orders in favour of the company under section 588J of the Act.

Section 588G(3) of the Act provides that if the director's failure to prevent the debt being incurred when the director suspected that the company was insolvent, or would become insolvent by incurring that debt or debts including that debt, and the director's failure to prevent the company incurring the debt was dishonest, then the director commits a criminal offence.

For civil liability to apply:

- (a) The person must be a director at the time the debt was incurred;
- (b) The company must be insolvent at the time the debt was incurred, or becomes insolvent by incurring the debt; and
- (c) The director must be aware of insolvency, or there were reasonable grounds for a person in that position to suspect insolvency.

Importantly under section 588M of the Act a liquidator may seek, from a director who has breached the insolvent trading provisions, compensation for losses suffered by creditors. This is not a right available to an administrator or a deed administrator.

Section 588H of the Act sets out defenses available to directors in respect of civil claims under section 588G(2), they are:

- (a) The director had reasonable grounds to expect that the company was solvent and would continue to be solvent when the debt was incurred;
- (b) The director relied on a competent and reliable person to provide information regarding the company's solvency and, on the basis of the information so provided, the director expected the company was solvent and would continue to be solvent when the debt was incurred;
- (c) Due to illness (or other good reason) the director was not involved in the management of the company; and
- (d) The director took all reasonable steps to prevent the debt being incurred.

## 7.5 Chronology of events

We have considered the major events affecting the company from the date of incorporation and leading up to the date of our appointment as Administrators. We set out below a summary chronology of these events:

Date	Event
16 June 2006	<ul style="list-style-type: none"> <li>The Company was incorporated as SAS Global Mandurah 2 Pty Ltd.</li> </ul>
31 August 2006	<ul style="list-style-type: none"> <li>The Company entered into a Deed of Assignment of Option to purchase the Property for the sum of \$21.35M (excluding GST). Settlement due on 28 December 2006.</li> <li>The Company entered into a Deed of Acknowledgement of Debt for \$10.52M to be fully paid on 28 December 2006.</li> </ul>
September 2006	<ul style="list-style-type: none"> <li>Koltasz Smith submitted a Planning Status Report to the Company which set out the key planning considerations required as part of the future rezoning and subdivisions of the Property. The required work and target completion dates were indicated as follows: <ol style="list-style-type: none"> <li>Applications for the MRS Amendment to be lodged by September 2006 with approval expected by February 2008.</li> <li>TPS Amendment is expected following the gazettal of the MRS Amendment. Target completion date is May 2008.</li> <li>The Local Structure Plan to be prepared by February 2008 and advertised and adopted by the City of Rockingham by May 2008.</li> <li>The subdivision plan for Subdivision Approval of the Property into residential lots to be lodged by April 2008 with approval expected by July 2008.</li> </ol> </li> </ul>
12 September 2006	<ul style="list-style-type: none"> <li>DPM provided a preliminary assessment of the likely development costs associated with the development of the Property. Costs were estimated at \$39M excluding GST.</li> </ul>
22 September 2006	<ul style="list-style-type: none"> <li>The Company changed its name to SAS Global Baldivis Pty Ltd.</li> </ul>
16 November 2006	<ul style="list-style-type: none"> <li>The Company became an unlisted public company and changed its name to SAS Global Baldivis Ltd.</li> </ul>
17 November 2006	<ul style="list-style-type: none"> <li>The Company issued a Prospectus to raise \$25M to acquire the Property. The prospectus was lodged with ASIC.</li> </ul>
1 December 2006	<ul style="list-style-type: none"> <li>ASIC issued a stop order in respect of the Prospectus dated 17 November 2006 on the basis that the Prospectus was alleged to have contained misleading and deceptive statements and was said to have not been worded in a clear, concise and effective manner.</li> </ul>
13 December 2006	<ul style="list-style-type: none"> <li>The Company issued an Information Memorandum to investors to raise \$25M.</li> </ul>
19 December 2006	<ul style="list-style-type: none"> <li>Replacement Prospectus issued by the Company and lodged with ASIC.</li> </ul>
27 December 2006	<ul style="list-style-type: none"> <li>Fixed and Floating charge granted to the NAB. NAB advanced \$19.3M.</li> </ul>
28 December 2006	<ul style="list-style-type: none"> <li>Final date for minimum subscription to be met under the Replacement Prospectus dated 17 November 2006. Minimum subscription was met.</li> <li>Settlement of the Property occurred.</li> </ul>
3 January 2007	<ul style="list-style-type: none"> <li>Fixed and Floating charge granted to the NAB was registered with ASIC.</li> </ul>
29 January 2007	<ul style="list-style-type: none"> <li>The WAPC commenced public advertising of the MRS Amendment.</li> </ul>
27 March 2007	<ul style="list-style-type: none"> <li>Planning Status Update provided by Koltasz Smith indicated that timing for the completion of MRS Amendment, TPS Amendment, Local Structure Plan and Subdivision Approval remained as anticipated in the Planning Status Report of September 2006.</li> </ul>
1 May 2007	<ul style="list-style-type: none"> <li>The WaterCorp submitted their objection to the MRS Amendment to the WAPC on the basis that there is insufficient wastewater treatment capacity within the area to accommodate the residential development of the Property. WaterCorp estimated that the WWTP would not be operational until 2015.</li> </ul>
4 May 2007	<ul style="list-style-type: none"> <li>Advertising by the WAPC in respect of MRS Amendment concluded.</li> </ul>
27 June 2007	<ul style="list-style-type: none"> <li>Planning Status Update provided by Koltasz Smith indicated that timing for the completion of MRS Amendment, TPS Amendment, Local Structure</li> </ul>

Date	Event
	Plan and Subdivision Approval remained as anticipated in the Planning Status Report of September 2006.
<b>2 November 2007</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that:               <ol style="list-style-type: none"> <li>1. The scheduled completion for the MRS Amendment will be deferred to May 2008 as a result of lack of resources in the WAPC.</li> <li>2. The scheduled completion for the TPS Amendment will be deferred to August 2008 as it is subject to the MRS Amendment.</li> <li>3. The scheduled completion of the Local Structure Plan will be deferred to August 2008 as a result of delays referred to above.</li> <li>4. The scheduled completion of the Subdivision Approval will be July 2008 as a result of delays referred to above.</li> </ol> </li> </ul>
<b>30 January 2008</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith indicated that timing for the completion of MRS Amendment, TPS Amendment, Local Structure Plan and Subdivision Approval remained as anticipated in the Planning Status Update dated 2 November 2007 with the exception of TPS Amendment which is expected to be completed in June 2008 instead of August 2008.</li> </ul>
<b>7 May 2008</b>	<ul style="list-style-type: none"> <li>• In a letter to the WAPC, the Civil Group provided information in support of overturning the objection from the WaterCorp for the rezoning of the Property which suggested that the existing Kwinana Wastewater facilities will be suitable to serve East, South and North Baldivis beyond the completion of the WWTP in 2015.</li> </ul>
<b>14 May 2008</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that:               <ol style="list-style-type: none"> <li>1. The scheduled completion for the MRS Amendment will be deferred to August 2008 due to the complexities of the submission.</li> <li>2. The scheduled completion for the TPS Amendment will be deferred to September 2008 as it is subject to the MRS Amendment.</li> <li>3. The scheduled completion of the Local Structure Plan will be deferred to February 2009 as a result of delays referred to above.</li> <li>4. The scheduled completion of the Subdivision Approval will be deferred to February 2009 as a result of delays referred to above.</li> </ol> </li> </ul>
<b>4 July 2008</b>	<ul style="list-style-type: none"> <li>• The Company was required by the NAB to provide an updated valuation by 30 September 2008 to confirm that the LVR does not exceed 55% and to provide evidence of Development Approval, acceptable to the NAB by 31 December 2008.</li> </ul>
<b>22 July 2008</b>	<ul style="list-style-type: none"> <li>• RPS provided a status report regarding the approval of the WWTP. The report indicated the following:               <ol style="list-style-type: none"> <li>1. The WaterCorp is required to complete statutory environmental investigations to guide Commonwealth and State environmental approvals for the WWTP.</li> <li>2. The WaterCorp forecasts that the WWTP will be commissioned in 2015.</li> <li>3. Delays are attributable to lack of a co-ordinated approach between LandCorp and the WaterCorp regarding the location of the WWTP and uncertainty surrounding the EPBC approval process and responsibilities of LandCorp and WaterCorp.</li> </ol> </li> </ul>
<b>22 September 2008</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that:               <ol style="list-style-type: none"> <li>1. The scheduled completion for the MRS Amendment will be deferred to November 2008 due to time constraints within the WAPC as a result of the State Election and the appointment of a new Minister for planning.</li> <li>2. The scheduled completion for the TPS amendment will be deferred to December 2008 as it is subject to the MRS amendment.</li> <li>3. The scheduled completion of the Local Structure Plan remains at February 2009.</li> <li>4. The scheduled completion of Subdivision Approval is anticipated in March 2009.</li> </ol> </li> </ul>
<b>21 November 2008</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that:               <ol style="list-style-type: none"> <li>1. The scheduled completion for the MRS Amendment will be deferred</li> </ol> </li> </ul>

Date	Event
	<p>to December 2008 due to transitional arrangements between Ministers of the WAPC.</p> <ol style="list-style-type: none"> <li>2. The scheduled completion for the TPS amendment will be delayed to January 2009 as it is subject to the MRS amendment.</li> <li>3. The scheduled completion of the Local Structure Plan will be deferred to March 2009.</li> <li>4. The scheduled completion of Subdivision Approval is anticipated in April 2009.</li> </ol>
<b>3 December 2008</b>	<ul style="list-style-type: none"> <li>• MRS Amendment was finalised with the outcome being the transfer of the Property to "Urban Deferred" zone instead of "Urban". The transfer was gazetted and tabled in both Parliamentary Houses where it was subject to disallowance for twelve parliamentary sitting days before coming into effect on 26 June 2009.</li> <li>• Reasons for the "Urban Deferred" status instead of "Urban" are as follows: <ol style="list-style-type: none"> <li>1. Insufficient wastewater treatment capacity;</li> <li>2. Unresolved drainage requirements; and</li> <li>3. Unresolved school site requirements.</li> </ol> </li> </ul> <p>The WAPC submissions report indicate that points 2 and 3 above had strategies underway to resolve the matters with point 1 being the matter causing the longest delay in the Lifting of Urban Deferment.</p>
<b>5 December 2008</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that: <ol style="list-style-type: none"> <li>1. As a result of the MRS Amendment transferring the Property to "Urban Deferred" zone, further work is required in achieving the Lifting of the Urban Deferment and having the land transferred to the "Urban" zone. This matter is contingent on the timing of the resolution of the WWTP matter. It was anticipated that this would be resolved by June 2009.</li> <li>2. The scheduled completion for the TPS amendment will be delayed to July 2009 as it is subject to the Lifting of the Urban Deferment.</li> <li>3. The scheduled completion of the Local Structure Plan will be delayed to September 2009.</li> <li>4. The scheduled completion of Subdivision Approval is anticipated in October 2009.</li> </ol> </li> </ul>
<b>30 December 2008</b>	<ul style="list-style-type: none"> <li>• The NAB, by way of letter of variation, extends that Expiry Date stated in the Letter of Offer (namely 31 December 2008) to 30 January 2009.</li> </ul>
<b>30 January 2009</b>	<ul style="list-style-type: none"> <li>• The NAB, by way of letter of variation, extends that Expiry Date of the loan facility from 30 January 2009 to 27 February 2009.</li> </ul>
<b>February 2009</b>	<ul style="list-style-type: none"> <li>• Valuation commissioned by the Company discloses that the Property has been valued at \$19.5M.</li> <li>• The Debt to the NAB stands at approximately \$19.25M.</li> <li>• As a result of the valuation the LVR now stands at 98.72% in breach of the covenant set by the NAB (not to exceed 55% of the updated licence valuation)</li> </ul>
<b>4 February 2009</b>	<ul style="list-style-type: none"> <li>• The NAB, by way of a facility grace letter extends the repayment date to on or before 27 February 2009 and requests that the Company provide the NAB with evidence that the LVR does not exceed 55% on or before 27 February 2009.</li> </ul>
<b>5 February 2009</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that: <ol style="list-style-type: none"> <li>1. The Lifting of the Urban Deferment is subject to the outcome of the WWTP matter and therefore is expected to be completed by October 2009.</li> <li>2. The scheduled completion for the TPS amendment will be deferred to October 2009 as it is subject to the Lifting of the Urban Deferment.</li> <li>3. The scheduled completion of the Local Structure Plan will be delayed to December 2009.</li> <li>4. The scheduled completion of Subdivision Approval is anticipated in January 2010.</li> </ol> </li> </ul>

Date	Event
27 February 2009	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter extends the repayment date to on or before 31 March 2009 and requests that the Company provide the NAB with evidence that the LVR does not exceed 55% on or before 31 March 2009.</li> </ul>
6 March 2009	<ul style="list-style-type: none"> <li>The Civil Group provided an updated schedule of likely development costs based on a preliminary subdivision concept plan prepared by RPS Koltasz Smith dated 10 December 2008. Costs are estimated at \$45.4M excluding GST.</li> </ul>
23 March 2009	<ul style="list-style-type: none"> <li>The Company issued an Offer Information Statement to raise \$9M to enable the Company to meet its obligations under the senior debt facility.</li> <li>Planning Status Update provided by Koltasz Smith indicated that timing for the completion of the Lifting of the Urban Deferment, TPS Amendment, Local Structure Plan and Subdivision Approval remained as anticipated the Planning Status Update dated 5 February 2009.</li> </ul>
25 March 2009	<ul style="list-style-type: none"> <li>The Company issued a Replacement Offer Information Statement to replace the Offer Information Statement dated 23 March 2009.</li> </ul>
30 March 2009	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter extends the repayment date to on or before 17 April 2009 and requests that the Company provide the NAB with evidence that the LVR does not exceed 55% on or before 17 April 2009.</li> <li>ASIC extended the period within which the Company must not issue or transfer shares under the disclosure document dated 23 March 2009 for a period of 14 days after 23 March 2009 (instead of the usual 7 day period).</li> </ul>
6 April 2009	<ul style="list-style-type: none"> <li>The Company issued a Replacement Offer Information Statement to replace the offer information statements dated 25 March 2009 and 23 March 2009.</li> </ul>
7 April 2009	<ul style="list-style-type: none"> <li>Planning Status Update provided by Koltasz Smith indicated that timing for the completion of the Lifting of the Urban Deferment, TPS Amendment, Local Structure Plan and Subdivision Approval remained as anticipated the Planning Status Update dated 23 March 2009.</li> <li>A meeting of shareholders was scheduled to be held to enable shareholders to vote on resolutions to raise a minimum of \$9M to enable the Company to meet its obligations to the NAB. A temporary injunction was granted by the Federal Court at the petitioning of shareholder, GTF. The meeting was adjourned to 29 April 2009.</li> </ul>
9 April 2009	<ul style="list-style-type: none"> <li>The Company issued a Supplementary Offer Information Statement which supplements the Replacement Information Statement dated 6 April 2009.</li> </ul>
29 April 2009	<ul style="list-style-type: none"> <li>The adjourned meeting of shareholders was scheduled to be reconvened however this was deferred when it became clear to the Directors that the required \$9M would not be raised from existing shareholders and thus options for alternate equity funding had to be sought.</li> </ul>
1 May 2009	<ul style="list-style-type: none"> <li>Planning Status Update provided by Koltasz Smith advised that: <ol style="list-style-type: none"> <li>The Lifting of the Urban Deferment is subject to the outcome of the WWTP matter and therefore is expected to be completed by November 2009.</li> <li>The scheduled completion for the TPS amendment will be deferred to November 2009 as it is subject to the Lifting of the Urban Deferment.</li> <li>The scheduled completion of the Local Structure Plan will be delayed to January 2010.</li> <li>The scheduled completion of Subdivision Approval is anticipated in February 2010.</li> </ol> </li> </ul>
7 May 2009	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter extends the repayment date to on or before 1 June 2009 or for the Company to enter into any alternative agreement at the NAB's sole discretion. The Company was also required to provide evidence that the LVR does not exceed 55% on or before 1 June 2009.</li> </ul>
4 June 2009	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter extends the repayment date to on or before 30 June 2009 or for the Company to enter into any alternative agreement at the NAB's sole discretion. The Company was also required to provide the NAB evidence that LVR does not exceed 55% on or before</li> </ul>

Date	Event
	30 June 2009.
<b>26 June 2009</b>	<ul style="list-style-type: none"> <li>The MRS Amendment which transferred the Property to the "Urban Deferred" zone came into effect.</li> </ul>
<b>30 June 2009</b>	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter, required to Company to:               <ol style="list-style-type: none"> <li>Provide the NAB with evidence that LVR does not exceed 55% on or before 31 July 2009;</li> <li>Repay the total amount owing on or before 31 July 2009;</li> <li>Enter into any alternative agreement at the NAB's sole discretion;</li> <li>Provide the NAB with any correspondence from creditors regarding debts due as soon as reasonably practicable; and</li> <li>Provide the NAB with any demands for payment of moneys due as soon as reasonably practicable.</li> </ol> </li> </ul>
<b>28 July 2009</b>	<ul style="list-style-type: none"> <li>A revised facility term sheet is accepted by the NAB and the Company which sets out repayments to be made on 15 December 2009, 28 February 2010 and 30 April 2010 of \$4M, \$3.8M and \$1.9M respectively with termination of the facility being on 30 June 2011.</li> </ul>
<b>31 July 2009</b>	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter, required to Company to:               <ol style="list-style-type: none"> <li>Repay the total amount owing on or before 14 August 2009;</li> <li>Enter into any alternative agreement at the NAB's sole discretion;</li> <li>Provide the NAB with any correspondence from creditors regarding debts due as soon as reasonably practicable; and</li> <li>Provide the NAB with any demands for payment of moneys due as soon as reasonably practicable.</li> </ol> </li> </ul>
<b>13 August 2009</b>	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter, required to Company to:               <ol style="list-style-type: none"> <li>Repay the total amount owing on or before 31 August 2009;</li> <li>Enter into any alternative agreement at the NAB's sole discretion;</li> <li>Provide the NAB with any correspondence from creditors regarding debts due as soon as reasonably practicable; and</li> <li>Provide the NAB with any demands for payment of moneys due as soon as reasonably practicable.</li> </ol> </li> </ul>
<b>25 August 2009</b>	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter extends the repayment date to on or before 11 September 2009 or for the company to enter into any alternative agreement at the NAB's sole discretion.</li> </ul>
<b>9 September 2009</b>	<ul style="list-style-type: none"> <li>The NAB, by way of a facility grace letter, required to Company to:               <ol style="list-style-type: none"> <li>Repay the total amount owing on or before 25 September 2009;</li> <li>Enter into any alternative agreement at the NAB's sole discretion;</li> <li>Provide the NAB with any correspondence from creditors regarding debts due as soon as reasonably practicable; and</li> <li>Provide the NAB with any demands for payment of moneys due as soon as reasonably practicable.</li> </ol> </li> </ul>
<b>18 September 2009</b>	<ul style="list-style-type: none"> <li>Planning Status Update provided by Koltasz Smith advised that:               <ol style="list-style-type: none"> <li>The Lifting of the Urban Deferment is subject to the outcome of the WWTP matter and therefore is expected to be completed by June 2010;</li> <li>The scheduled completion for the TPS amendment will be deferred to June 2010 as it is subject to the Lifting of the Urban Deferment;</li> <li>The scheduled completion of the Local Structure Plan will be delayed to July 2010; and</li> <li>The scheduled completion of Subdivision Approval is anticipated in August 2010.</li> </ol> </li> </ul>
<b>24 September 2009</b>	<ul style="list-style-type: none"> <li>NAB, by way of a facility grace letter, required to Company to:               <ol style="list-style-type: none"> <li>Repay the total amount owing on or before 16 October 2009;</li> <li>Enter into any alternative agreement at the NAB's sole discretion;</li> <li>Provide the NAB with any correspondence from creditors regarding debts due as soon as reasonably practicable; and</li> <li>Provide the NAB with any demands for payment of moneys due as soon as reasonably practicable.</li> </ol> </li> </ul>
<b>30 September 2009</b>	<ul style="list-style-type: none"> <li>The Company signs a mandate to act as Lead Manager and underwriter to a Rights issue and initial public offering put forward by Patersons Corporate Finance.</li> </ul>
<b>15 October 2009</b>	<ul style="list-style-type: none"> <li>NAB, by way of a facility grace letter, required to Company to:               <ol style="list-style-type: none"> <li>Repay the total amount owing on or before 18 November 2009;</li> </ol> </li> </ul>

Date	Event
	<ol style="list-style-type: none"> <li>2. Enter into any alternative agreement at the NAB's sole discretion;</li> <li>3. Provide the NAB with any correspondence from creditors regarding debts due as soon as reasonably practicable; and</li> <li>4. Provide the NAB with any demands for payment of moneys due as soon as reasonably practicable.</li> </ol>
<b>16 October 2009</b>	<ul style="list-style-type: none"> <li>• Notice to shareholders regarding proposed Annual General Meeting and Recapitalisation proposal</li> <li>• The Recapitalisation proposal provided for the following: <ol style="list-style-type: none"> <li>1. a share consolidation of the Company's current issue capital.</li> <li>2. a pro-rata entitlement issue to existing shareholders to facilitate the recapitalisation process;</li> <li>3. the renaming of the Company to Mercury Consolidated Limited which is to be listed on the ASX;</li> <li>4. the support of new equity investors through an IPO of shares in Mercury Consolidated Limited; and</li> <li>5. The introduction of a new board of directors and senior management team as part of the IPO process to guide Mercury Consolidated Limited to complete the Baldivis development and pursue other appropriate investment opportunities.</li> </ol> </li> </ul>
<b>26 October 2009</b>	<ul style="list-style-type: none"> <li>• Valuation report by Knight Frank discloses that Property has a value of \$19M (GST exclusive).</li> </ul>
<b>2 November 2009</b>	<ul style="list-style-type: none"> <li>• Planning Status Update provided by Koltasz Smith advised that the following amended target completion dates apply but are subject to approval of the WWTP by the Minister of Environment: <ol style="list-style-type: none"> <li>1. The Lifting of the Urban Deferment is subject to the outcome of the WWTP matter which is expected to be resolved by June 2010, unless Ministerial approval is required, in which case the estimated completion date would be December 2013;</li> <li>2. The scheduled completion for the TPS amendment will be concurrent with the Lifting of the Urban Deferment;</li> <li>3. The scheduled completion of the Local Structure Plan will be deferred to September 2010 but may be extended to May 2014 as a result of delays at point 1 and 2 above; and</li> <li>4. The scheduled completion of Subdivision Approval is anticipated in October 2010 but may be extended to September 2014 as a result of delays at point 1 and 2 above.</li> </ol> </li> </ul>
<b>4 November 2009</b>	<ul style="list-style-type: none"> <li>• Solomon Brothers, who represented major shareholders of the Company, issued a letter to all shareholders of the Company seeking support to vote against the proposed recapitalisation and vote for the winding up of the Company.</li> </ul>
<b>6 November 2009</b>	<ul style="list-style-type: none"> <li>• Martin Jones, Darren Weaver and Andrew Saker of Ferrier Hodgson were appointed Joint and Several Voluntary Administrators of the company.</li> </ul>
<b>9 November 2009</b>	<ul style="list-style-type: none"> <li>• Shareholders of the Company attended AGM at the Hyatt. Shareholders were presented with an overview of the VA process and no proposals were considered at the meeting.</li> <li>• R&amp;M Appointed</li> </ul>

We have also considered and analysed the updates that were provided to shareholders and summarise them below:

Anticipated Date - Per Shareholder Updates							
Event	Prospectus - 19/12/06	Autumn 2007	Spring 2007	Winter 2008	3rd Qtr 2008	1st Qtr 2009	Sept 2009
Minimum Subscription \$10,000,000	28/12/2006						
Settlement of Property	28/12/2006						Completed to Urban Deferred (26 June 2009)
MRS Zoning Amendment from Rural to Urban	N/A	February 08	1st qtr 2008	October 08	February 09	October 09	
Local Structure Plan Adopted	N/A	Early 2008	Mid 2008	February 09	May 09	October 09	
Subdivision Approval	April 08	Mid 2008	Mid 2008	February 09	December 09	Early 2010	
Site Works Commence	July 08	September 08 Qtr	September 08 Qtr	Mid 2009	December 09	Mid 2010	
Pre-sales Commence	October 08	Late 2008	September 08	Late 2009			
1st Stage Completed	June 09		March 09 Qtr	Late 2009			
Expected 1st Dividend	November 10	November 10	November 10	November 10			
Final Dividend	July 12	July 12	July 12	2013	2014		
Subdivision Numbers	640	640	640	640	640	731	731

### 7.5.1 Rezoning Process

As previously noted, the Company did not obtain the required rezoning approval from the WAPC in order to begin making presales on the subdivided lots. This source of cashflow was imperative for working capital purpose and eventually the cost of the subdivision itself.

Further, we note that the prospectus contained a report by DPM which clearly stated that rezoning in relation to the Property from rural to urban would not occur until the matter regarding insufficient wastewater capacity in the area was addressed. In this regard and according to DPM, zoning will not be able to occur until 2015 when the East Rockingham WWTP was expected to be commissioned.

We note that in a letter to the WAPC dated 7 May 2008 the Civil Group provided factual support for other wastewater treatment facilities to support further subdivisions throughout the Baldivis area, including the Project.

According to the report, the Kwinana WWTP was then operating at 50-70% capacity and the remaining capacity is allocated to those lots that already have urban zoning. The Company put forward a proposal to the WAPC on the basis that some of the remaining capacity at the Kwinana WWTP could be utilised for the Property allowing development to occur immediately, and the other lots zoned urban would be developed in time to utilise the East Rockingham WWTP.

Since our appointment, we have requested that the Project Managers provide an update of Project. The Project Managers advised that environmental approval surrounding the WaterCorp's East Rockingham WWTP site has been finalised between the date of our appointment and the writing of this report. The approval was deemed favourable with the referral decision from the DEWHA, being a 'not controlled action'. For the East Rockingham WWTP referral, the key issues identified by the DEWHA were Carnaby's Black Cockatoos and the Floristic Community Type (FCT) 19 Sledgeland in Holocene dunes. In this regard, the cost of development for the East Rockingham WWTP increased due to the relocation of the proposed recycling facility to be housed on site.

Additionally, we have been advised by the Project Managers that at the outset of the Project there were generally three factors that needed to be resolved before the property could be zoned from rural to urban, being:

1. Water Management Scheme;
2. High School Site for East Baldivis area; and
3. Wastewater Treatment capacity for sewerage generated.

We note that points 1 and 2 have been completed and 3 is subject to the Water Corp lifting their objection to the urbanisation of the area which was submitted on the basis that the Kwinana WWTP cannot support the

treatment of wastewater and therefore the no further approvals can be granted until WWTP is commissioned in 2015.

### 7.5.2 Application of funds

We have attempted to provide a reconciliation of funds derived from both audited financials and management payment reconciliations. A summary of that reconciliation appears below:

Receipts and Payments SGBL	Amount (\$)
<b>Receipts</b>	
Net proceeds from borrowings	19,245,800
net proceeds from share issues	20,042,636
Related party loans	8,100,000
Other	696,390
	<b>48,084,826</b>
<b>Payments</b>	
Property acquisition	(31,929,901)
Development Expenditure (inc payments under the Project Management Agreement)	(11,851,308)
Interest	(4,303,617)
	<b>(48,084,826)</b>
<b>Cash at bank 6 November 2009</b>	<b>0</b>

In respect of the above we make the following comments:

- Net proceeds from borrowings are less establishment fees and net proceeds in relation to share issues are less specific costs of issue (i.e. the cost of the prospectus);
- During the initial stages of the project the Company obtained various loans from related parties. These loans are covered earlier in this report and are subject to review;
- Other receipts pertain to receivables such as GST and interest earned from cash at bank;
- The acquisition of the property is exclusive of GST;
- During the life of the project the Company spent approximately \$11.8M on development expenditure which includes expenditure to related parties under the Project Management Agreement.
- Interest pertains to fees incurred and paid under the NAB fixed and floating facility.

Further to the above, we confirm that the reconciliation is preliminary in nature. Any future appointed liquidator will have to conduct a more thorough investigation to determine the reasonableness of the transactions.

## 7.6 Assessment of the Company's Solvency

Our duties as Administrator oblige us to consider and provide a preliminary report on the solvency of the Company pursuant to section 439A. We note that a liquidator is required to conduct more comprehensive investigations into the affairs of Company and report to ASIC, pursuant to section 533 of the Act.

Considering the reliance of the Company on external funding to maintain the viability of the Project, the solvency of the Company is determined by the cash resources on hand and available from external sources. We note that the Company operated a drawdown facility with the NAB for the purposes of working capital and preliminary development prior to the commencement of pre-sales.

We note the below analysis is derived from both audited and unaudited financials. We have not conducted an audit of the figures, nor are we required to conduct an audit and therefore we make no representations or warranties with respect to the below.

### 7.6.1 Net Assets Test

The balance sheet position of the Company as at the year ended 2007, 2008, 2009 and at 31 October is as tabled below:

<b>Balance Sheet</b>	<b>30-Jun-07</b>	<b>30-Jun-08</b>	<b>30-Jun-09</b>	<b>31-Oct-09</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Total Assets	34,957,208	38,307,353	20,414,990	19,827,238
Total Liabilities	(17,413,415)	(18,292,000)	(19,324,089)	(19,537,644)
<b>Net Assets</b>	<b>17,543,793</b>	<b>20,015,353</b>	<b>1,090,901</b>	<b>289,594</b>
<b>Net Asset Ratio</b>	<b>2.01</b>	<b>2.09</b>	<b>1.06</b>	<b>1.01</b>

In respect of the above, we make the following comments:

- Net assets remained positive throughout the life of the Company, however as detailed later in this report, adequate LVRs were not maintained;
- The Company's net asset position declined significantly upon receipt of the valuation at \$19.5M in early 2009;
- Drawdowns on the NAB facility during 2008 increased the total liabilities of the Company.

### 7.6.2 Working Capital Test

The working capital position determines whether or not a Company can pay its immediate debts with its immediate assets, a positive working capital is when current assets exceeds current liabilities.

<b>Balance Sheet</b>	<b>30-Jun-07</b>	<b>30-Jun-08</b>	<b>30-Jun-09</b>	<b>31-Oct-09</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Current assets	493,605	2,175,849	826,092	250,084
Current liabilities	(1,773,959)	(18,292,000)	(19,324,089)	(19,536,183)
<b>Working capital / (deficiency)</b>	<b>(1,280,354)</b>	<b>(16,116,151)</b>	<b>(18,497,997)</b>	<b>(19,286,099)</b>
<b>Working Capital Ratio</b>	<b>(0.28)</b>	<b>(0.12)</b>	<b>(0.04)</b>	<b>(0.01)</b>

In respect of the above, we make the following comments;

- The Company maintained a significant working capital deficit from infancy till the date of our appointment;
- As the facility came into maturity the Company reclassified the NAB facility as a current liability. Further, the Company obtained extensions on the maturity of the facility, as tabled in the chronology of events at Section 7.5 of this report; and
- The decrease in available cash at bank reduced the Company's current liabilities. However, given the quantum of debt at maturity the current assets noted in the above table are immaterial.

In view of the above, we consider the Company to be insolvent from a working capital perspective as early as 30 June 2007. As noted earlier however, in determining insolvency the balance sheet test is not considered to be as relevant as the cashflow test which we discuss further below.

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### 7.6.3 Cashflow Test and Company Initiatives

As noted, the question of solvency turns upon when the directors had reasonable grounds to suspect that the company would not be able to meet its debts as and when they fell due.

In this regard, the directors of the Company considered and undertook a number of separate initiatives to address available cash resources in order to raise an additional \$10M in working capital, including but not limited to:

- Alternative Bank Debt;
- Hybrid Debt Instruments;
- Rights issue;
- Disposal of property;
- Private capital raising;
- Underwritten listing on the ASX; and
- Joint Venture Partner.

These initiatives were considered was focused on rectifying the Company's LVR with the NAB, to avoid any actions by the NAB and in order to maintain the facility in good standing.

If it is established that there were reasonable grounds to rely on the success of these initiatives to maintain the solvency of the relevant entity at the relevant times, the Directors will have a reasonable argument against any claim that the Company was insolvent, and in turn any claim of insolvent trading. It is necessary for us to consider when doubt existed as to the likelihood of success of the relevant initiatives, or in fact whether they were sufficient, and when it should have become known that the aggregate outcomes would not be adequate to enable debts to be met as they fell due.

These initiatives comingled with the fact that the Company had minimal amounts of outstanding trade creditors whilst having approximately \$48,000 cash at bank as at the day of our appointment, indicates that the company was solvent and there would be limited basis for an insolvent trading claim pursuant to section 588G of the Act.

We have conducted preliminary analysis of the cash flow and profit and loss forecasts of the Project, including the major assumptions underlying the cashflow and the reasonableness of those assumptions, as per below:

<b>Estimated Profit &amp; Loss</b>	<b>(\$)</b>
<b>Income</b>	
Sales	134,301,181
	<b>134,301,181</b>
<b>Expenditure</b>	
Land Acquisition	(34,203,753)
Construction	(56,984,550)
Marketing and Finance	(728,000)
Other	(6,567,808)
	<b>(98,484,110)</b>
<b>Net profit</b>	<b>\$ 35,817,071</b>

In respect of the above, we make the following comments:

- The above profit and loss summary is based on the Company's cashflow model over the life of the project;

- Sales forecasts are based on 620 lots sold in intervals of 90 every six months at an average of \$218,000 per lot. Further, the Project is reliant on these sales in order to fund the subdivision;
- As noted earlier in the report the cost of land acquisition was as follows:

	(\$)
Land at Cost	21,350,000
Development Costs Capitalised	11,645,135
Borrowing Costs	1,085,151
	<b>\$ 34,080,286</b>

- Other expenses referred to in the above table relates primarily to interest payable on the NAB facility, however it also includes the stamp duty assessed on the initial purchase;
- Our preliminary review of the independent experts reports in relation to the likely costs of the subdivision support the above forecast. There are variances between preliminary quantity surveyor and subsequent reports over the life of the Project, however these amounts are not material;

We consider the forecasted profit and loss for the life of the Project to be reasonable given the indicative timeline provided by the Company in the prospectus. There was also sufficient disclosure in relation to fees attributable to the project manager over the life of Project.

Several key assumptions were made in order to maintain that view of positive cashflow, and it is those assumptions that we are continuing to test by way of our further investigations and review.

#### 7.6.4 Review of banking covenants

Besides the cashflow for the Company it is also relevant to consider the standing of the existing of the debt facilities. As displayed in the chronology of events at section 7.5 of this report, the Company obtained several extensions to the NAB facility and was also requested to decrease its LVR against a rising trend, as tabled below:

	30-Jun-07 (\$)	30-Jun-08 (\$)	30-Jun-09 (\$)	6-Nov-09 (\$)
Total Facility	19,300,000	19,300,000	19,300,000	19,300,000
Used Amount	15,639,456	18,291,000	19,245,800	19,245,800
<b>Unused Amount</b>	<b>3,660,544</b>	<b>1,009,000</b>	<b>54,200</b>	<b>54,200</b>
Value of property	34,053,286	36,016,677	19,500,000	19,000,000
<b>LVR</b>	<b>46%</b>	<b>51%</b>	<b>99%</b>	<b>101%</b>

In respect of the above, we make the following comments:

- The Company is required under the NAB facility agreement / mortgage to maintain a LVR of no greater than 55%;
- As noted previously this was initially breached in early 2008 when a property valuation was not conducted notwithstanding the Bank's request to do so;
- There are a number of external market factors that have lead to a decline in value of the property, being the current status of the zoning and the general commercial property market conditions.
- Further, upon receipt of the valuation in early 2009 the Company immediately sought to correct the LVR by considering options to raise \$10 million in working capital; and
- The additional working capital or the approval from rural zoning to urban (which would have increased the valuation) would have corrected the LVR and the Company would have no longer been in breach of its debt covenants.

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As such, on 28 July 2009 the Company signed a Term Sheet provided by the NAB which required the following amounts to be repaid in order to maintain the loan facility:

- \$4M by 15 December 2009;
- \$3.8M by 28 February 2010; and
- \$1.9M by 30 April 2010.

Based on our review of the books and records of the Company, no other exceptions or breaches were identified of the banking and cash covenant requirements.

Given the financial position of the Company and the limited options available to raise further capital, the directors resolved to appoint Andrew Saker, Darren Weaver and Martin Jones as Joint and Several Administrators on 6 November 2009. In addition, Brian McMaster and Mark Mentha of KordaMentha were appointed R&M on 9 November 2009 pursuant to the duly registered fixed and floating charged in favour of the NAB.

### 7.6.5 Trade Creditor Position

The table below sets out an analysis of the aged payables for the Company, as at the date of our appointment:

Ageing at date of appointment	Total \$000's	Current \$000's	30 Days \$000's	60 Days \$000's	90+ Days \$000's
Trade creditors as at <b>6 November 2009</b>	(6,924)	(6,924)	0	0	0
Percentage of total	100.0%	100.0%	0.0%	0.0%	0.0%

The ageing of trade creditors as the date of our appointment indicates that there were no overdue balances, a sign that trade creditors were being paid on a regular basis in accordance with the Company's payment cycle. That is, comingled with the minimal trade creditor commitments and the cash at bank, the Company was not insolvent from a trade creditor perspective.

We have not adjudicated or assessed the validity of the proofs of debt of the outstanding trade creditors. We note that these creditors lodged informal proofs of debt for voting purposes at the first meeting of creditors and they were not included in the directors RATA.

### 7.7 Other Indicators of Insolvency

Case law has identified various indicators of insolvency that are useful to assess with regard to the Company's circumstances in order to have a proper consideration of a Company's financial position in its entirety and in the context of commercial reality.

We comment on several of these indicators below, being grounds upon which a director should suspect insolvency, and we consider their application to the Company's circumstances.

(a) *Knowledge of substantial trading losses*

As the Company was not a trading entity, this factor has no bearing on the insolvency of the Company.

(b) *Advice from financial controller that liquidity was tight; e.g. a supplier taking legal action to recover debt, or difficulty in paying debts when due; and had concerns as to solvency*

The Company paid its trade creditors when they fell due and payable and therefore from that perspective there were no concerns as to solvency. However, due to the lack of available funding alternatives and the NAB's concerns regarding the LVR, the Directors and the Project Manager should have had some apprehension as to the solvency of the Company.

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(c) *Knowledge of company's inability to obtain or increase finance facilities*

The Company sought to raise further capital initially through a share offer to existing shareholders and then through a listed public offering. The Company had no further means to obtain capital after the failure of the public offering. Please refer to the chronology of events at section 7.5 in this regard.

(d) *Knowledge of requirement for substantial working capital to bring creditors into line with trading terms*

Trade creditors were maintained within trade terms so this was not an issue.

(e) *Knowledge of legal demands*

No legal demands were issued against the Company, however two writs were issued in relation to alleged misleading and deceptive conduct against the Company and other property syndicates of SAS. Please refer to section 7.11.7 of this report in relation to current legal action commenced against the Company.

(f) *Knowledge of failure to meet statutory employee payments*

The Company did not have any employees.

(g) *Board consulting insolvency practitioner as to general concept of insolvency and the administration process*

There has been no evidence to suggest that the Company did consult an insolvency practitioner other than the informal discussion that lead them to resolve to appoint an Administrator to the Company on 6 November 2009.

(h) *Resignation of financial officer stating concerns regarding insolvent trading*

There was no resignation of the financial officer.

(i) *Knowledge of the appointment of an investigating accountant by the company's bankers*

There were concerns by the NAB in relation to the increase in LVR as a result of falling property prices. 333 Capital, a company affiliated with KordaMentha were engaged to conduct an Investigative Accountants report on the Company and to consider the NAB's position.

(j) *Knowledge of the bank's concerns and the bank's view that there has been a material adverse change*

We have not identified any view expressed by the NAB as to an opinion of a material adverse change, other than the action referred to above.

(k) *Unexplained resignation of other director*

There were no unexplained resignations in the period immediately prior to our appointment.

(l) *ASIC enquiry in relation to company's solvency*

We are not aware of any line of inquiry that ASIC may have conducted. Further, we advise that to our knowledge there have been no investigations by ASIC into the affairs of any company within the SAS Global Group.

(m) *Bank facilities on demand*

The NAB facilities with the Company had not been placed on demand prior to our appointment.

(n) *Knowledge of major creditors long overdue*

Generally, creditor accounts were paid within normal trading terms.

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In addition to the above factors, it has also been demonstrated that consideration should be given to evidence that gives rise to the conclusion of insolvency by way of the further indicative factors that are discussed below with reference to the Company:

- *Creditors were not being paid as and when they fell due; e.g. where there are many large debts outstanding over 9 months*

There was no evidence of any significant major balances outstanding.

- *Debt collectors retained by creditors*

We have not identified any instances where debt recovery action was taken by creditors against the Company.

- *Legal proceedings initiated by creditors*

We have not identified any instances where creditors initiated legal action to recover debts. A credit search of Company has not revealed any winding up applications issued.

- *Creditors placing company on cash on delivery terms*

We are not aware of any creditors having imposed cash or restricted trading terms.

- *Power supply threatened for non-payment*

Our investigations have not identified that there any threat of termination of power supplies.

- *Daily management of creditor payments on a crisis basis*

We have no identified any daily management of creditor payments on a crisis basis

- *Cheques drawn but held until cash allowed release*

We have not identified any practice of drawing and holding cheques by the Company.

- *Non-payment of payroll tax and PAYG remittances*

The Company had no employees and accordingly had no PAYG or payroll tax liabilities.

- *Creditor exercising lien rights*

We are not aware of any creditors exercising any lien rights in respect of Company property.

- *Negotiated special repayment terms with creditors*

Other than the waiver of banking covenants in early 2008 and early 2009, we are not aware of any special repayment terms negotiated with creditors.

- *Post dated cheques issued to creditors*

We have not identified any evidence that the Company issued post-dated cheques.

- *Significant and continuing trading losses*

The Company was a project development company and did not conduct any trading.

- *Unsuccessful attempts to raise debt or equity deteriorating relationship with banker*

There were attempts to obtain additional finance once the LVR increased to ensure compliance with debt covenants, however the Company was unsuccessful.

- 
- *Banking facilities put on demand*

The Bank facility that the Company operated had not been placed on demand prior to our appointment.

- *Deteriorating financial ratios*

As detailed early in this report, the Company's LVR deteriorated significantly upon receipt of the valuation in early 2009. As such, it is apparent the NAB became concerned as to the viability of the Project.

Having considered the above factors with regard to the Company's circumstances it is evident that many of the factors do not apply and others that are applicable occurred later in the chronology of dates or are explainable in some respects. There are no significant factors that give rise to evidence of the conclusion of insolvency other than immediately prior to the appointment date. In our view, and subject to our further investigations to be completed, these indicate that the date of insolvency is likely to be closer to the date of appointment of the administrators on 6 November 2009.

### **7.7.1 Proposed Restructuring**

The Property is currently zoned as "Urban Deferred" and the outstanding approval matters required to transfer the zoning to 'urban' is subject to the resolution of the insufficient wastewater treatment capacity issue highlighted by the WaterCorp.

As the zoning has not been approved the Company was not in a position where presales could be made and therefore was not generating cashflow to support the viability of the project.

Accordingly, the Company advised its shareholders through convening of an AGM and issuing an explanatory memorandum that the Company had breached its debt covenants and required further funding to support the project. Such funding was to be achieved through an IPO.

The Company received a proposal from Patersons to recapitalise the Company through a share consolidation and listing on the ASX. At full subscription the Company would raise approximately \$35 million had have sufficient capital to restore debt covenants and continue the project. The AGM was scheduled to occur on 9 November 2009. From our limited review of the proposal, we understand that shareholders were not in favour of the recapitalisation proposal put forward by Patersons as it encompassed a significant dilution of existing share capital. The proposal was also met with resistance by certain shareholders.

### **7.7.2 Disclosure obligations**

Unlisted public companies have obligations in relation to disclosure as prescribed under ASIC regulatory guide 198. That is, material information should be disclosed on the company's website in accordance with the regulatory guide's good practice provisions.

We note that the Company did not place updates on its website, however in accordance with the regulatory guide, the Company did issue quarterly updates in relation to the Project.

In this regard, our preliminary review considers the obligations in relation to disclosure as having been fulfilled. A liquidator would be required to conduct further investigations into this matter, in particular some of the concerns that have been raised by Robert Graham ATF the Graham Family Trust, as outlined in section 7.11.7.1 of this report.

## **7.8 Preliminary conclusions on solvency**

As noted above, it is necessary to identify and report to creditors, a likely date of insolvency of the Company. In this regard, we make preliminary comments as follows:

- (a) The other factors that typically indicate a conclusion of insolvency, or at least a suspicion of insolvency on the part of the directors, were not generally present and if they were present it was late in the chronology of dates and events;
- (b) There were concerns by the NAB in relation to the increase in LVR as a result of falling property prices. We note that 333 Capital, a company affiliated with KordaMentha, were engaged to conduct an Investigative Accountants report on the Company and consider the NAB's exposure; and
- (c) The Company had no recourse to obtain further debt or equity finance and given the delay in the approval process which in effect delayed the Company's ability to generate cash through sales caused the directors to appoint Administrators.

Given the range of factors influencing the Company's insolvency we table below the relevant dates that the Company would have been insolvent from that perspective:

Assessment Areas	Date Relevant to Solvency Assessment
<b>Financial Assessment</b>	
Profitability	Not Applicable
Working Capital Deficiency	June 2007
Net Assets	No Examples
<b>Source of Funding</b>	
External Finance Declined	October/November 2009
<b>Other Insolvency Indicators</b>	
Non Compliance with Finance Facilities	March 2009
Aged Trade Payables Outside of Terms	No Examples
Payment Arrangements with Creditors	July 2009
Statutory Payments in Arrears	No Examples
Demands, Writs & Summons	November 2009
Dishonoured Cheques	No Examples
<b>Presumption of Insolvency</b>	6 November 2009

As noted in our introduction, our conclusion as to the date of insolvency is preliminary in nature. A liquidator may perform further detailed investigations, including the benefit of public examination of officers and their parties that would provide further information.

Having regard to the above, we consider that the Company was potentially insolvent as early as March 2009 but given the defences available to the Directors it is likely that the date of insolvency was closer to the date of our appointment, being 6 November 2009.

## 7.9 Books and Records

Section 286 of the Act requires a company to keep written financial records that:

- Correctly record and explain the company's transactions, financial position and performance; and
- Would enable true and fair financial statements to be prepared and audited.

The financial records must be retained for a period of seven (7) years after the transactions covered by the records are completed.

A failure to maintain books and records in accordance with Section 286 may give rise to a rebuttable presumption of insolvency which may be relied upon by a liquidator in an application for compensation for insolvent trading.

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From our inspection of available records we are of the view, subject to the qualification below, that:

- The Company had prepared audited annual accounts for the years up to 30 June 2009;
- Management accounts were prepared on a monthly basis up to 31 October 2009;
- All journals and primary records supporting the journals were available upon our request; and
- Primary books and records appear to have been adequately maintained.

We conclude on a preliminary basis that we have not identified any specific breaches of Section 286 of the Act by the Company.

## **7.10 Potential Liquidator recoveries – voidable transactions**

During the course of our investigations, we have considered whether the Company entered into any transactions which appear to be voidable and may result in money being recovered. It is important to note that voidable transactions may only be recovered if the creditors of that company resolve to place the Company into liquidation.

### **7.10.1 Unfair preference**

A liquidator is able to recover from a creditor, payments made to it where:

- (a) It results in the creditor receiving more than it would in a winding up;
- (b) The company is insolvent or becomes insolvent because of the payments;
- (c) The transaction occurred within 6 months of the appointment of the Administrators (or 4 years if the transaction was with a related party, or 10 years if the transaction was made with the intention to defeat Creditors); and
- (d) The Creditor or a reasonable person in the Creditor's position had reasonable grounds to suspect that the company was insolvent.

Our preliminary investigations into the Company's affairs reveal a number of payments across different entities which may be voidable as unfair preferences, subject to further investigation and determination of the date of insolvency.

Typically, factors which indicate payments might be unfair preferences include:

- (a) Payments in response to winding up applications, statutory demands and other pressure from the creditor;
- (b) Repayment plans with the creditor; and
- (c) Significant 'round' figure instalment type payments were made to the creditor.

We are not aware of any factors represented by (a), (b) or (c) above.

The payments would be protected if the creditor from whom the liquidator seeks to recover:

- (a) Became a party to the transaction in good faith; and
- (b) At the time when they became a party:

- 
- They had no reasonable grounds for suspecting that the Company was insolvent at that time, or would become insolvent; and
  - A reasonable person in that person's circumstances would have had no such grounds for so suspecting; and
- (c) Provided valuable consideration under the transaction or has changed their position in reliance on the transaction.

A creditor seeking protection must prove all three elements.

Further, where a creditor received a series of payments as part of a so called 'running account' and their overall indebtedness increases over the same period, the creditor is taken not to have received an unfair preference. This is called 'the running account defence'.

A liquidator may seek legal advice on the strength of a claim including the applicability of these defences. It is also likely any recovery action commenced by a liquidator would be defended. Creditors should be aware that the costs of pursuing preferences, and other voidable transactions, can be considerable and may outweigh the benefit to creditors in many circumstances.

We have been advised by the directors, that:

- (a) No formal or informal payment arrangements were in place with any creditors or suppliers.
- (b) No payment plan was in place in respect of taxation or other statutory debts.
- (c) No written demands or threats of legal action in relation to payment were received within the six month period prior to our appointment.

Notwithstanding the above, we have identified the following transactions of concern:

On 6 November 2009, the directors of the Company transferred its total cash at bank balance of \$148,347 to SGPGPL's bank account, ostensibly to effect payment of outstanding creditors of the Company.

We note that the directors have paid the balance of the funds to the Administrators, and that:

- approximately \$100,219 has been used to repay trade creditors, which would otherwise be unsecured creditors in the Administration; and
- the balance of the account is now \$48,128.

In this regard, we confirm that we have received funds totalling \$48,128 from SGPGPL. These funds are currently held in a separate bank account operated by us.

We have confirmed through publicly available information and credit searches that no winding up applications had been issued by creditors against any of the Company. We also refer to the aged trade creditors position set out at section 7.6.5 above, and note that creditors generally appear to have been paid within trade terms.

We have also identified a number of other payments made to certain creditors who appear to have received a benefit greater than they otherwise would in liquidation. We have not to date, however, formed a view as to whether those creditors had knowledge of the relevant company's financial position, and accordingly those amounts are not tabled as potential recoveries.

A liquidator will perform further work and investigation in respect of these amounts before determining whether they are recoverable. In particular, a final determination will need to be made as to the date of insolvency which is a fundamental component of any recovery.

For the purposes of this report, we estimate potential recoveries from unfair preferences will be in the vicinity of \$100,219. Please note this estimate has been determined based on our preliminary analysis only. There is no guarantee that a liquidator will recover funds or that the costs of recovery will outweigh any benefit to creditors.

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## 7.10.2 Uncommercial transactions

A transaction is an uncommercial transaction if it is made at a time when the company is insolvent and it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction having regard to:

- The benefits or detriment to the company of entering into the transaction; and
- The prospective benefits to other parties to the transaction upon entering into it.

Should a Liquidator establish any such uncommercial transactions, those transactions may be set aside thereby increasing the funds available to ordinary unsecured creditors.

We have identified from our preliminary investigation certain transactions that warrant further investigation but none that could be said with any certainty at this time that would result in recovery for creditors. The date of insolvency is also relevant as to whether these transactions would be considered recoverable.

We consider the transactions under the following subheadings:

- Loans to Directors; and
- Acquisitions and Disposals of Fixed Assets and Property.

## 7.10.3 Loans to Directors

As part of our review, we have considered those loans made to Directors of the Company or related parties. In determining the commercial nature of such loans we have considered the applicability of the interest rate, securities taken, repayment terms and loan forgiveness (where applicable). Our preliminary review has not concluded that there are no transactions that may be considered uncommercial.

We advise the Directors did not operate any loan accounts from the Company.

## 7.10.4 Acquisitions and Disposals of Property and Fixed Assets

From our preliminary investigations we have reviewed the Property acquisition and comment as follows:

- The original proprietor of the land was Josephine Caroline Armstrong ("Armstrong");
- SPM Baldivis Pty Ltd ("SPMB") entered into an Option to Purchase Land ("Option") with Armstrong on or about April 2006;
- The latest date for exercise of this option was 31 August 2006;
- The terms of the Option provided that, upon exercise of the Option, the holder would enter into a contract to purchase the land from Armstrong;
- SPMB entered into a Deed of Assignment ("May Assignment") with Greenbase Nominees Pty Ltd ("Greenbase") dated 15 May 2006. Effectively assigning the option from SPMB to Greenbase;
- The terms of the May assignment expressly prohibited the further assigning of the option;
- Greenbase entered into a Project Management and Marketing Agreement ("Project Management Agreement") with SPM Project Marketing Pty Ltd ("SPMM") on 16 June 2006, by which certain rights and obligations were created for the development and sale of the land;

- Under the Project Management Agreement, Greenbase agreed to make payment to SPMM on termination of the contract or a breach of any terms, being \$3 million plus GST;
- Further, the Project Management Agreement expressly provided that Greenbase could not transfer its rights in respect of the option or purchase agreement to a third party unless it procured entry by that third party into the Project Management Agreement;
- On 31 August 2006 Greenbase requested SPMM and SPMB consent to the assignment of its interest in the Property to the Company. The parties then entered into a Deed of Assignment of Option on the same day;
- We note that at the time of the initial assignment there was no encumbrances on the certificate of title;
- According to documents lodged with Landgate, the Company purchased the Property from Armstrong on 31 August 2006 for \$23,485,000 (including GST);
- The records of the Company contain an undated Deed of Acknowledgment of Debt between Greenbase and the Company in the amount of \$10,519,055. The terms of which provide upon execution of the Option the Company was liable for the principal sum being the aforementioned amount;
- The purchase price above plus the Deed of Acknowledgment of Debt amount equate to the purchase price reported under the prospectus, being \$34,004,055; and
- A company search of Greenbase, subsequently deregistered, identified a fixed and floating charge registered on 9 November 2006 in favour of Michael and Sue Foulds. The maximum prospective liability of this charge pursuant to Section 282 of the Act was \$10,000,000.

The above has been derived from the information available and we are continuing to assess the validity of this assignment. However please note that a liquidator would be required to conduct further investigations in respect of this transaction before determining whether it may result in recoveries for the benefit of creditors.

### 7.10.5 Unfair Loans

Section 588FD provides that a loan to a company is unfair if the interest and charges were extortionate when the loan was made, or has since become extortionate. In considering whether interest and charges are extortionate, regard must be had to:

- Risk the lender is exposed to;
- Value of any security;
- Term;
- Repayment schedule;
- Amount of loan; and
- Any other relevant matters.

The Company operated a debt facility with the NAB as summarised below:

	Amount (\$)
Fixed Amount	13,000,000
Floating Amount	6,300,000
<b>Total</b>	<b>19,300,000</b>

The floating component operates as a drawdown facility, of which was almost fully drawn down as at the date of our appointment.

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Pursuant to the management agreement between the Company and SGPGPL the Company is liable for management fees payable in monthly instalments of \$15,000 from the settlement date over a 73 month period. An amount of \$105,000 was paid during the 2007 financial year.

SGPGPL is also entitled to a project establishment fee of \$3.25M of which \$1,476,041 was paid during the 2007 financial year and \$1,773,959 paid in the subsequent financial year.

The Company had the following related party loans:

- \$750,000 as an unsecured loan from SGPGPL. An interest charge of \$191,283 resulted from interest applied at 36% per annum was paid during the 2007 financial year. During the 2008 financial year \$262,264 was repaid.
- \$750,000 from Sumita Pty Ltd, a company associated with Philip Meagher. The amount was repaid during the 2007 financial year.
- \$5.5M from SAS Global Yangebup Ltd, with interest charged at 36% per annum. The debt was converted into equity in April 2007.
- \$700,000 from SAS Global Mandurah Ltd and the amount was fully repaid during the 2007 financial year. Interest in the amount of \$11,814 was paid, based on a rate of 36% per annum.
- \$400,000 from Capital Union Pty Ltd (although reported in the audited financials as available to us, as a loan from SAS Global Forrestdale 2 Pty Ltd) and the amount was fully repaid during the 2007 financial year, including interest of \$6,328. We have been advised that these monies were a redirection of commission due to Capital Union Pty Ltd (which were ultimately to be paid to various advisors) from SAS Forrestdale 2 Pty Ltd to the Company.
- Capital raising commissions of \$370,154 in the 2007 financial year and \$294,636 in the 2008 financial year were paid to Capital Union Pty Ltd. We have been advised that Capital Union Pty Ltd acted as a commission distribution agent for SAS Global Ltd (AFSL holder) and the capital raising commissions were then on-paid to various advisors who raised the funds.

Based on our preliminary investigations to date, the terms of the loans provided to the Company, may have been unfair loans. However, a liquidator appointed to those entities would perform further work and investigation in respect of the loan transactions and with the benefit of that further information, may reach a different view.

#### **7.10.6 Unreasonable director related transactions**

Pursuant to Section 588FDA of the Act, a transaction is an unreasonable director-related transaction of the company if:

- The transaction is a payment, transfer of property, issue of securities or incurring of an obligation by the company;
- Made by the director or close associate of the director; and
- That a reasonable person in the company's circumstances would not have entered into having regard to the benefit or detriment to the company or other parties.

Should a liquidator establish any such transactions within the four years prior to appointment, they may be set aside thereby increasing the funds available to unsecured creditors.

We have attempted to identify all director-related transactions, including director remuneration, bonuses, loans, share schemes, retirement benefits, loan forgiveness, and asset acquisitions and/or disposals to directors within the four year period.

From our preliminary review of the Company's records we have no identified an unreasonable director related transactions. Director loans have been addressed in section 7.10.3 of this report.

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Notwithstanding the above, further investigation is desirable to consider the benefit and detriment to the company in entering into and the payment of, in order to determine whether the transaction would fall under the provisions of Section 588FDA of the Act.

A liquidator would perform further work and investigation in respect of this transaction and S588FDA before concluding on the merits of the claim and whether it would produce available recoveries for the benefit of creditors.

## **7.11 Other potential liquidator recoveries**

### **7.11.1 Falsification of Books**

Pursuant to Section 1307 of the Act, it is an offence for a person to engage in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books effecting or relating to affairs of the company.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1307 will not result in recovery of funds by a liquidator.

Our preliminary investigations have not revealed any evidence of falsification of books.

### **7.11.2 False or Misleading Statements**

Pursuant to Section 1308 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge, is false or misleading in a material particular.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1308 will not result in recovery of funds by a Liquidator.

Our preliminary investigations have not revealed any evidence of any false or misleading statements.

### **7.11.3 False Information**

Pursuant to Section 1309 of the Act, it is an offence for an officer or employee to make available or give information to a director, auditor, member, debenture holder, or trustee for debenture holders of the company that is to the knowledge of the officer or employee:

- (a) False or misleading in a particular manner; or
- (b) Has omitted from it a matter the omission of which renders the information misleading in a material respect.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1309 of the Act will not result in any recovery by a Liquidator.

Our preliminary investigations do not reveal any evidence of any false information.

### **7.11.4 Obstruction of creditors' rights**

Section 588FE of the Act provides for the voiding of transactions designed to defeat, delay or interfere with creditors rights.

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Our preliminary investigations have not identified transactions entered into by the company intended to obstruct creditors' rights and which would give rise to recoveries for the benefit of creditors. However if a liquidator were appointed, they would perform further work and investigation in respect of this area before concluding on the availability of any recoveries for the benefit of creditors.

#### **7.11.5 Voidable charges**

Our preliminary review of the books and records considers the NAB facility to be, prima facie, valid. However we again note that a liquidator would be required to conduct further investigations into the affairs of the Company.

#### **7.11.6 Avoidance of employee entitlements**

Our preliminary investigations to date have not identified any transactions or actions that would constitute a contravention of Part 5.8A of the Act by any person, however a liquidator would perform further work and investigation in respect of this area before concluding on the availability of any recoveries for creditors.

#### **7.11.7 Current Legal Actions**

To date we have received correspondence from two different legal representatives of shareholders in relation to their separate claims against the Company. We summarise below the details of the claims received since our appointment:

##### ***7.11.7.1 Robert Graham (ATF the Graham Family Trust)***

Mr Graham issued a writ against the Company and the following individuals, companies and related parties thereto:

- SAS Global Mandurah Ltd (Administrators Appointed) (Receivers and Managers Appointed)
- SAS Global Forrestdale 2 Ltd
- SAS Global Pty Ltd
- Nigel Thomas Gill
- Philip Anthony Meagher.

Mr Graham lodged a claim as an unsecured creditor against the company for a breach of the Trade Practices Act and the Fair Trading Act, claiming that he was misled into the purchase of shares in the company.

We referred Mr Graham's solicitors to section 440D of the Act, which provides for a stay of proceedings against a company in administration unless leave of the Court is granted or the Administrators consent is provided.

On 2 December 2009, we received notification that Mr Graham's solicitors that they request that the Administrators provide consent in order for them to proceed with the legal against the company. In addition, we have also been notified that Mr Graham has filed a Notice of Mention in the Federal Court of Australia for leave to proceed against the company pursuant to section 440D(1) and section 500(2) (in the event the Company is placed into Liquidation).

The merit of these types of claims will be determined in due course however, the matters raised in the claims (to the extent that it is relevant to the Company) will be subject to our ongoing investigation and the investigation of any liquidator appointed.

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### 7.11.7.2 *Richard Francis Bryant and Joan Irene Bryant*

A Writ of Summons was forwarded to us by the Company. The Writ is undated however we are seeking further details in relation to this.

The writ is against the Company and the following other companies in the SAS Global Property Group:

- SAS Global Ltd;
- SAS Global Coogee Ltd;
- SAS Mosman Park Equity Ltd; and
- Nigel Thomas Gill.

The statement of claim alleges false and misleading statements and unconscionable conduct.

Again, the merit of these types of claims will be determined in due course and the matters raised in the claims (to the extent that it is relevant to the Company) will be subject to our ongoing investigation and the investigation of any liquidator appointed.

### 7.11.8 **Project Management Fees**

We have conducted an assessment of the fees payable to the project manager, as summarised below:

<b>Project Management Fees</b>	<b>Amount (\$)</b>
Per Month Management Fee	<b>\$15,000 (excl GST)</b>
Capital Raising Fee	<b>6.5%</b>
Project Fee	<b>\$3.25M</b>
Disposal of Assets Fee	<b>5%</b>
Profit Share Fee	<b>50/50 Spilt of profit over 20% p.a. of invested capital</b>

In respect of the above, we make the following comments:

- The prospectus discloses all of the fees payable to the project manager, being SGPGPL;
- The management fee is payable per month plus GST for services associated with running and maintaining the project;
- The capital raising fee is 6.5% of the gross equity raised through the share issue;
- The project fee is payable upon settlement of the entire project;
- As you may be aware, contained within the SAS Global Group is a company that holds a real estate licence. This company would have been responsible for selling the sub-divided lots, accordingly the project manager would have been entitled to a commission of 5% on the sale price; and
- Should there have been profits over and above the anticipated net profit, there would have been at 50% split between shareholders and the project manager.

All fees payable to the project manager were clearly outlined and disclosed in the prospectus. We note that in the time available to us we have not been able to consider the reasonableness of the fees that were being paid

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to the Project Manager. However we note that a liquidator would be required to conduct further investigations in respect of this transaction before determining whether it may result in recoveries for the benefit of creditors.

## 7.12 Breach of Directors Duties

Sections 180, 181, 182 and 183 of the Act, impose fiduciary duties on directors to:

- Exercise their powers and duties in relation to the company with a degree of care and diligence;
- To act good faith and for a fit and proper purpose that is in the best interests of the corporation;
- To prevent conflicts arising between personal interest and the company's interest;
- An obligation to act only in the best interests of the company; and
- To avoid improper use of specific information that has been obtained through the directors' work with the company to gain directly or indirectly an advantage.

The objective test or standard of measure in the suspected breach of conduct of above is the reasonableness of the actions taken by directors and requiring the directors to demonstrate that their actions are the same degree and level that would be required of an ordinary reasonable person holding a similar position and responsibility in the same circumstances.

Our investigations with respect to whether there have been any breaches of directors' duties are continuing.

## 7.13 Report to ASIC

Section 438D of the Act requires us to lodge a report with the ASIC should we become aware of:

- Any offences committed by a past or present officer of any of the company's over which we are appointed;
- Evidence that monies or property has been misapplied or retained; or
- Evidence that a party is guilty of negligence, default, breach of duty or breach of trust in relation to any of the company's over which we are appointed.

Our preliminary investigations have not indentified evidence of any breach of the Act that would require us to lodge a report with the ASIC pursuant to section 438D of the Act in respect of this Company.

## 7.14 Summary of potential liquidator recoveries

Set out below is a summary of transactions that will be of interest to a liquidator arising from investigations discussed in this report. We note that these are potential recoveries by a liquidator in the event the Company is wound up and could be in a range of possible values and could be as low as nil.

Potential Recovery Item	High (\$)	Low (\$)
Unfair preferences	TBD	Nil
Uncommercial transactions	TBD	Nil
Unfair loans	TBD	Nil
Unreasonable director related transactions	TBD	Nil
Transactions undertaken to obstruct creditors' rights	Nil	Nil
Compensation from director for insolvent trading	TBD	Nil
Breaches of directors duties	TBD	Nil
<b>Total</b>	<b>TBD</b>	<b>Nil</b>

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## **7.15 Directors' ability to pay a liquidator's claims**

The merits of any potential insolvent trading action by a Liquidator would need to be considered in light of the Directors' net asset position. We have requested that all the directors provide a statement of their financial position however no such statement has been forthcoming.

Our preliminary investigations have revealed that the Directors' net asset position is subject to a mixture of personal and corporate interest, including personal guarantee's provided by them in respect to the secured creditors' debt. Further investigations will be required in regards to the directors' net asset positions

For completeness, we also note that the directors do not have a directors' and officers' insurance policy which would respond to any claims brought by a liquidator.

## **8. Proposal for DOCA**

### **8.1 Statement of proposed DOCA**

No DOCA has been proposed as at the date of this report. Therefore, this option is not available to creditors.

For completeness, we note that whilst at the commencement of the Administration a DOCA had been contemplated, the Company's circumstances are such that the Director was unable to present a DOCA proposal adequate to provide a return to ordinary unsecured creditors.

## **9. Creditors' options, dividend estimates and cost estimates**

Pursuant to Section 439A(4)(b) of the Act, we are required to provide creditors with a statement setting out our opinion on whether it is in the creditors' interests for the:

- Administration to end;
- Company to be wound up; or
- Company to execute a DOCA.

Given that no DOCA proposal has been put forward this option falls away.

In forming our opinion, it is necessary to consider an estimate of the dividend creditors might expect, and the likely costs, under each option however in the current circumstances such estimates are not available or may be difficult to predict with accuracy.

### **9.1 Administration to end**

Creditors may resolve that the administration should end if it appears the company is solvent or, for some other reason, control of the company should revert to its directors.

Based on our preliminary investigations and analysis of the Company's financial information, the Company is insolvent. Accordingly, there appears to be no valid commercial reason why control of the Company should revert to the directors. If the administration was to end, there is no mechanism controlling an orderly realisation of assets and distribution to creditors. We are unable to say what the Company ultimately pay creditors or what costs it might incur.

Therefore, our opinion is that it is not in the creditors' interest for the Administration of the Company to end.

### **9.2 Winding up of Company**

In the absence of a DOCA proposal, the winding up of the Company is the only commercial option remaining. Given the nature, size and costs involved in determining the value of the asset and potential recoveries in a liquidation scenario it is difficult to determine with any degree of certainty the likely level of return to unsecured creditors that would arise from liquidation.

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Therefore, the Administrators' opinion is that it is in the creditors' best interests for the Company to be wound up and placed into liquidation.

The costs of winding up the Company's affairs are estimated at \$80,000 although these costs would be considerably higher in the event that the potential claims referred to above at Section 6 of this report are pursued. It is unclear as to whether there will be any assets available to meet these costs or to return/dividend to creditors.

## **10. Administrators' opinion**

As stated in section 9.1 above, the option of the Administration ending is clearly not viable. The only remaining option available to creditors is to wind up the Company.

From the information set out in section 9.2 of this report, I estimate that the return to unsecured creditors should the company be wound up is likely to be nil.

Based on the above, it is our opinion that creditors should resolve that the company should be wound up.

## **11. Administrators' remuneration report**

Pursuant to Section 446E of the Act, we enclose as **Annexure 1** the Administrators' Remuneration Report. At the second meeting of creditors, we intend seeking approval of the remuneration set out in the remuneration report. Details of disbursements incurred are also included in the remuneration report.

## **12. Further queries**

We will advise creditors in writing, if practicable, of any additional matter that comes to our attention after the dispatch of this report that, in our view, is material to creditors' deliberations.

In the meantime, should creditors have any queries, please do not hesitate to contact either Sandra Gauci or Sean Holmes of this office.

DATED this 3<sup>rd</sup> day of December 2009.



MARTIN JONES  
Joint and Several Administrator of  
SAS Global Baldivis Limited

Encl.

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# **Annexure 1**

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## **Administrators' Remuneration Report**

# CORPORATIONS ACT 2001

## Section 449E

### **SAS GLOBAL BALDIVIS LTD ACN 120 233 490 (Administrators Appointed) (Receivers and Managers Appointed)**

#### **REMUNERATION REPORT**

The Administrators' Remuneration Report, prepared pursuant to Section 449E of the Corporations Act 2001, takes the following format.

#### **Part A**

- A1 Schedule of hourly rates and general guide to staff experience
- A2 Tasks undertaken by the Administrators and remuneration calculation for the period 6 November 2009 to 30 November 2009
- A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period 1 December 2009 to 11 December 2009
- A4 Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 12 December 2009 to the conclusion of the liquidation
- A5 Resolutions to be put to creditors at the meeting convened for 11 December 2009

#### **Part B**

- B1 Administrators' disbursements
- B2 Summary of Receipts and Payments for the period 6 November 2009 to 30 November 2009
- B3 Other creditor information on remuneration
- B4 Initial advice to creditors

The Remuneration Report must be read in conjunction with the report to creditors dated 3rd December 2009.

## PART A

### A1 FERRIER HODGSON PERTH SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE

Classification	Rate (\$)	Experience
Partner/Appointee	540	The Partner/Appointee is a registered liquidator and member of the ICAA and IPAA bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.ferrierhodgson.com">www.ferrierhodgson.com</a>
Principal/Director	460	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and IPAA with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	390	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and IPAA; very strong knowledge of relevant insolvency legislation and issues.
Manager	325	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and IPAA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	285	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior 1	255	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA, program. Good knowledge of basic insolvency legislation and issues.
Senior 2	230	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Intermediate 1	185	Generally, 1 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Intermediate 2	155	0 – 1 year's experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Senior Secretary	150	Appropriate skills including machine usage.
Junior/Filing	130	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

#### Notes:

1. The hourly rates are exclusive of GST.
2. The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
3. Time is recorded and charged in six-minute increments.
4. Rates are subject to change from time to time.

**A2. Tasks undertaken by the Administrators and remuneration calculation for the period 6 November 2009 to 30 November 2009**

Administrators' fees, based on the tasks detailed below and covering the above period are \$61,781.00 (excl GST).

<b>Assets</b> <b>4.0 Hours</b> <b>\$868.50</b>	Sale of business as a going concern	<ul style="list-style-type: none"> <li>▪ Liaising with interested parties</li> <li>▪ Internal meetings to discuss / review proposals received</li> <li>▪ Reviewing valuations</li> </ul>
	Sale of real property	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, agents and strata agent</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>
<b>Creditors</b> <b>78.2 Hours</b> <b>\$18,581.50</b>	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Initial circular to creditors. Initiate report pursuant to section 439A of the Act.</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ 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.</li> <li>▪ Preparation and lodgement minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>
	Shareholder enquires	<ul style="list-style-type: none"> <li>▪ General liaison with shareholders</li> <li>▪ Receive and follow up shareholder enquiries via telephone and email</li> <li>▪ Maintaining shareholder enquiry register</li> <li>▪ Review and prepare correspondence to shareholders and their representatives via facsimile, email and post</li> </ul>
<b>Investigation</b> <b>85.0 Hours</b> <b>\$19,096.00</b>	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Review of company books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing company's books and records/seek Report as to Affairs</li> <li>▪ Review and preparation of company nature and history</li> <li>▪ Conducting and summarising statutory searches</li> <li>▪ Preparation of comparative financial statements</li> <li>▪ Review of specific transactions and liaising with directors regarding certain transactions</li> <li>▪ Reviewing investor updates and summarising</li> <li>▪ Preparing chronology of major events</li> <li>▪ Preparation of investigation file</li> </ul>
	Litigation / Recoveries	<ul style="list-style-type: none"> <li>▪ Liaising with solicitors regarding various matters</li> </ul>
<b>Administration</b> <b>85.0 Hours</b> <b>\$23,235.00</b>	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Filing of documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Correspondence with Willis regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>



Bank account administration	<ul style="list-style-type: none"><li>▪ Preparing correspondence opening and closing accounts</li><li>▪ Requesting bank statements</li><li>▪ Bank account reconciliations</li><li>▪ Correspondence with bank regarding specific transfers</li></ul>
ASIC Form 524 and other forms	<ul style="list-style-type: none"><li>▪ Preparing and lodging ASIC forms including 505 and 5011</li><li>▪ Correspondence with ASIC regarding statutory forms</li></ul>
ATO & other statutory reporting	<ul style="list-style-type: none"><li>▪ Notification of appointment</li></ul>
Planning / Review	<ul style="list-style-type: none"><li>▪ Discussions regarding status/strategy of administration</li></ul>

**A2 (cont) Tasks undertaken by the Administrators and remuneration calculation for the period 6 November 2009 to 30 November 2009**

Employee	Position	Charge Rate (\$)	Total		Assets		Creditors		Investigation		Administration	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	540	12.20	6,588.00	-	-	1.50	810.00	-	-	10.70	5,778.00
Darren Weaver	Partner	540	0.10	54.00	-	-	-	-	-	-	0.10	54.00
Malcolm Field	Manager	390	3.30	1,287.00	0.10	39.00	0.50	195.00	2.30	897.00	0.40	156.00
Kieran Chu	Supervisor	285	76.80	21,888.00	0.90	256.50	22.60	6,441.00	25.50	7,267.50	27.80	7,923.00
Shannon Coleman	Senior 2	230	14.60	3,358.00	-	-	0.60	138.00	8.50	1,955.00	5.50	1,265.00
Erlyn Dale	Senior 2	230	13.10	3,013.00	-	-	11.20	2,576.00	-	-	1.90	437.00
Derek Kier	Senior 2	230	0.80	184.00	-	-	0.30	69.00	-	-	0.50	115.00
Sandra Gauci	Senior 2	230	34.90	8,027.00	0.40	92.00	15.00	3,450.00	-	-	19.50	4,485.00
Georgina Luck	Intermediate 1	185	12.40	2,294.00	-	-	3.10	573.50	8.70	1,609.50	0.60	111.00
Clinton Roberts	Intermediate 1	185	6.30	1,165.50	-	-	5.70	1,054.50	-	-	0.60	111.00
Sean Holmes	Intermediate 1	185	65.60	12,136.00	2.60	481.00	17.70	3,274.50	38.90	7,196.50	6.40	1,184.00
Adrian Di Menna	Intermediate 2	155	1.40	217.00	-	-	-	-	1.10	170.50	0.30	46.50
Sam Wilson	Intermediate 2	155	0.10	15.50	-	-	-	-	-	-	0.10	15.50
Melissa Kroon	Secretary	150	0.20	30.00	-	-	-	-	-	-	0.20	30.00
Jacqui Westwood	Secretary	150	8.60	1,290.00	-	-	-	-	-	-	8.60	1,290.00
Dorothy Radisich	Clerk	130	1.80	234.00	-	-	-	-	-	-	1.80	234.00
<b>Total</b>			<b>252.20</b>	<b>61,781.00</b>	<b>4.00</b>	<b>868.50</b>	<b>78.20</b>	<b>18,581.50</b>	<b>85.00</b>	<b>19,096.00</b>	<b>85.00</b>	<b>23,235.00</b>



### A3 Schedule of anticipated tasks and Administrators' estimated prospective remuneration for the period 1 December 2009 to 11 December 2009

Based on the following anticipated tasks, I estimate the Administrators' fees for the above period to be \$25,000 (excl GST).

<b>Assets</b> <b>6.0 Hours</b> <b>\$1,810.00</b>	Sale of business as a going concern	<ul style="list-style-type: none"> <li>▪ Liaising with interested parties</li> <li>▪ Internal meetings to discuss / review proposals received</li> <li>▪ Reviewing valuations</li> </ul>
	Sale of real property	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, agents and strata agent</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>
<b>Creditors</b> <b>32.0 Hours</b> <b>\$7,310.00</b>	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Finalising report to creditors pursuant to section 439A of the Act</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ 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.</li> <li>▪ Preparation and lodgement minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>
	Shareholder enquires	<ul style="list-style-type: none"> <li>▪ General liaison with shareholders</li> <li>▪ Receive and follow up shareholder enquiries via telephone and email</li> <li>▪ Maintaining shareholder enquiry register</li> <li>▪ Review and prepare correspondence to shareholders and their representatives via facsimile, email and post</li> </ul>
<b>Investigations</b> <b>43.0 Hours</b> <b>\$10,255.00</b>	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of company books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of company nature and history</li> <li>▪ Review of specific transactions and liaising with directors regarding certain transactions</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Liaising with ASIC (if required)</li> </ul>
<b>Administration</b> <b>23.0 Hours</b> <b>\$5,625.00</b>	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Administration reviews</li> <li>▪ Filing of documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Correspondence with Willis regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> </ul>



		<ul style="list-style-type: none"> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505 and 5011</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records / storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>



**A3 (Cont) Schedule of anticipated tasks and Administrators' estimated prospective remuneration for the Period 1 December 2009 to 11 December 2009**

Employee	Position	Charge Rate (\$)	Total		Assets		Creditors		Investigation		Administration	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	540	4.00	2,160.00	-	-	-	-	2.00	1,080.00	2.00	1,080.00
Malcolm Field	Manager	390	8.00	3,120.00	2.00	780.00	2.00	780.00	2.00	780.00	2.00	780.00
Kieran Chu	Supervisor	285	22.00	6,270.00	2.00	570.00	8.00	2,280.00	10.00	2,850.00	2.00	570.00
Shannon Coleman	Senior 2	230	8.00	1,840.00	2.00	460.00	2.00	460.00	2.00	460.00	2.00	460.00
Erlyn Dale	Senior 2	230	6.00	1,380.00	-	-	2.00	460.00	2.00	460.00	2.00	460.00
Sandra Gauci	Senior 2	230	6.00	1,380.00	-	-	2.00	460.00	2.00	460.00	2.00	460.00
Georgina Luck	Intermediate 1	185	12.00	2,220.00	-	-	5.00	925.00	5.00	925.00	2.00	370.00
Clinton Roberts	Intermediate 1	185	8.00	1,480.00	-	-	3.00	555.00	4.00	740.00	1.00	185.00
Sean Holmes	Intermediate 1	185	18.00	3,330.00	-	-	5.00	925.00	11.00	2,035.00	2.00	370.00
Sam Wilson	Intermediate 2	155	8.00	1,240.00	-	-	3.00	465.00	3.00	465.00	2.00	310.00
Jacqui Westwood	Secretary	150	3.00	450.00	-	-	-	-	-	-	3.00	450.00
Dorothy Radisich	Clerk	130	1.00	130.00	-	-	-	-	-	-	1.00	130.00
<b>Total</b>			<b>104.00</b>	<b>25,000.00</b>	<b>6.00</b>	<b>1,810.00</b>	<b>32.00</b>	<b>7,310.00</b>	<b>43.00</b>	<b>10,255.00</b>	<b>23.00</b>	<b>5,625.00</b>



#### A4 Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 12 December 2009 to the conclusion of the liquidation

Based on the following anticipated tasks of the Liquidation, I estimate the Liquidators' fees to be \$80,000 (excl GST).

<b>Assets</b> <b>47.0 Hours</b> <b>\$14,970.00</b>	Sale of business as a going concern	<ul style="list-style-type: none"> <li>▪ Preparing an information memorandum</li> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Internal meetings to discuss / review offers received</li> </ul>
<b>Creditors</b> <b>85.0 Hours</b> <b>\$19,335.00</b>	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor</li> <li>▪ Responding to secured creditor's queries</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Preparing general reports to creditors</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with regarding POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ 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.</li> <li>▪ Preparation and lodgement minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>
	Shareholder enquires	<ul style="list-style-type: none"> <li>▪ General liaison with shareholders</li> <li>▪ Receive and follow up shareholder enquiries via telephone and email</li> <li>▪ Maintaining shareholder enquiry register</li> <li>▪ Review and prepare correspondence to shareholders and their representatives via facsimile, email and post</li> </ul>
<b>Investigations</b> <b>92.0 Hours</b> <b>\$21,885.00</b>	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of company books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of company nature and history</li> <li>▪ Conducting and summarising statutory searches</li> <li>▪ Preparation of comparative financial statements</li> <li>▪ Preparation of deficiency statement</li> <li>▪ Review of specific transactions and liaising with directors regarding certain transactions</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> <li>▪ Lodgement of report with the ASIC pursuant to section 533 of the Act</li> <li>▪ Preparation and lodgement of supplementary report if required</li> </ul>
	Examinations	<ul style="list-style-type: none"> <li>▪ Preparing brief to solicitor</li> <li>▪ Liaising with solicitor(s) regarding examinations</li> <li>▪ Attendance at examination</li> <li>▪ Reviewing examination transcripts</li> <li>▪ Liaising with solicitor(s) regarding outcome of examinations</li> </ul>



		and further actions available
	Litigation / Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
<b>Administration</b> <b>97.0 Hours</b> <b>\$23,810.00</b>	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ First month, then 6 monthly administration review</li> <li>▪ Filing of documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Willis regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 524, and 5011 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> </ul>
	Finalisation	<ul style="list-style-type: none"> <li>▪ Notifying ATO of finalisation</li> <li>▪ Cancelling ABN / GST / PAYG registration</li> <li>▪ Completing checklists</li> <li>▪ Finalising WIP</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records / storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>



**A4 (cont) Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 12 December 2009 to the conclusion of the liquidation**

Employee	Position	Charge Rate (\$)	Total		Assets		Creditors		Investigation		Administration	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	540	18.00	9,720.00	5.00	2,700.00	-	-	3.00	1,620.00	10.00	5,400.00
Malcolm Field	Manager	390	24.00	9,360.00	6.00	2,340.00	6.00	2,340.00	6.00	2,340.00	6.00	2,340.00
Kieran Chu	Supervisor	285	75.00	21,375.00	30.00	8,550.00	10.00	2,850.00	20.00	5,700.00	15.00	4,275.00
Shannon Coleman	Senior 2	230	28.00	6,440.00	6.00	1,380.00	10.00	2,300.00	6.00	1,380.00	6.00	1,380.00
Erlyn Dale	Senior 2	230	18.00	4,140.00	-	-	6.00	1,380.00	6.00	1,380.00	6.00	1,380.00
Sandra Gauci	Senior 2	230	32.00	7,360.00	-	-	20.00	4,600.00	6.00	1,380.00	6.00	1,380.00
Georgina Luck	Intermediate 1	185	31.00	5,735.00	-	-	10.00	1,850.00	15.00	2,775.00	6.00	1,110.00
Clinton Roberts	Intermediate 1	185	25.00	4,625.00	-	-	10.00	1,850.00	12.00	2,220.00	3.00	555.00
Sean Holmes	Intermediate 1	185	21.00	3,885.00	-	-	5.00	925.00	10.00	1,850.00	6.00	1,110.00
Sam Wilson	Intermediate 2	155	22.00	3,410.00	-	-	8.00	1,240.00	8.00	1,240.00	6.00	930.00
Jacqui Westwood	Secretary	150	22.00	3,300.00	-	-	-	-	-	-	22.00	3,300.00
Dorothy Radisich	Clerk	130	5.00	650.00	-	-	-	-	-	-	5.00	650.00
<b>Total</b>			<b>321.00</b>	<b>80,000.00</b>	<b>47.00</b>	<b>14,970.00</b>	<b>85.00</b>	<b>19,335.00</b>	<b>92.00</b>	<b>21,885.00</b>	<b>97.00</b>	<b>23,810.00</b>

Please note that the above is an estimate only. If costs exceed the estimate, I will advise creditors accordingly and seek further approval.



## **A5 Resolutions to be put to creditors at the meeting convened for 11 December 2009.**

At the meeting of creditors convened for 11 December 2009, creditors will be asked to consider the following resolutions:

*"The Administrators remuneration, as set out in the Administrators' remuneration report dated 3 December 2009 for the period 6 November 2009 to 30 November 2009 in the sum of \$61,781.00 (exclusive of GST)."*

*"The Administrators' further remuneration for the period 1 December 2009 to 11 December 2009 be fixed in accordance with the hourly rates of Ferrier Hodgson up to the sum of \$25,000 (exclusive of GST)."*

If the company is placed into Liquidation:

*"The Liquidators' remuneration be fixed in accordance with the Ferrier Hodgson hourly rates up to the sum of \$80,000 (exclusive of GST) and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration."*

## **PART B**

### **B1 Administrators' Disbursements**

Disbursements are divided into three types **D1**, **D2** and **D3**.

- D1 Disbursements are all externally provided professional services and are recovered at cost. An example of a D1 disbursement is legal fees.
- D2 Disbursements are externally provided non professional costs such as travel, accommodation and search fees. D2 disbursements are recovered at cost.
- D3 Disbursements are internally provided non professional costs such as photocopying and document storage. D3 disbursements are charged at cost except for photocopying, printing and telephone calls which are charged at a rate which is intended to recoup both variable and fixed costs. The relevant rates are set out below.

Disbursements	Charges (Excluding GST)
Postage	At cost
Telephone	At cost
Photocopying	35 cents per copy
Facsimile	\$1.00 per page
File Set Up	At cost
Advertising	At cost
Storage – Per Box	At cost
Storage – Per File	At cost
Couriers	At cost



Disbursements incurred to date are shown in the Summary of Receipts and Payments. Creditor approval for the payment of disbursements is not required. However, the Administrators must account to creditors. Creditors have the right to question the incurring of disbursements and can challenge disbursements in court.

**B2 Summary of Receipts and Payments for the period 6 November 2009 to 30 November 2009.**

<b>Summary of Receipts and Payments</b>		<b>\$</b>
<b>Receipts</b>		
Debtor recoveries		48,128.30
<b>Payments</b>		
Nil		0.00
<b>Cash at Bank</b>		<b>48,128.30</b>

**B3 Other creditor information on remuneration**

The partners of Ferrier Hodgson Western Australia are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice. A copy of the Code of Professional Practice may be found on the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au)

An information sheet concerning approval of remuneration in external administrations can also be obtained from the IPA website.

**B4 Initial Advice to Creditors**

**Remuneration Methods**

There are four basic methods that can be used to calculate the remuneration charged by an insolvency Practitioner. They are:

1. **Time based / hourly rates**  
This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
2. **Fixed Fee**  
The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.
3. **Percentage**  
The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.
4. **Contingency**  
The practitioner's fee is structured to be contingent on a particular outcome being achieved.

**Method chosen**

Given the nature of this administration we propose that our remuneration be calculated on time based hourly rates.



This method was selected as it is the most practical method, and provides the most transparency to creditors given the nature of this administration.

Queries regarding remuneration should be directed to Clinton Roberts of this office.

Dated this 3<sup>rd</sup> day of December 2009.

A handwritten signature in black ink, appearing to read 'M. Jones', with a large, sweeping flourish underneath.

MARTIN JONES  
Joint and Several Administrator of  
SAS Global Baldivis Ltd

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# **Annexure 2**

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**IPA - Creditor Information Sheet  
Offences, Recoverable Transactions and Insolvent Trading**

# Creditor Information Sheet

## Offences, Recoverable transactions and Insolvent Trading



### Offences

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

180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
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 auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
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 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.

### Voidable Transactions

#### *Preferences*

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, 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 either 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 time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.



The company must have been insolvent at the time of the transaction, or become insolvent as a result 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 have to have been entered into any time on or before the day when 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 transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, 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 are voidable by a liquidator:

- Floating charge created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 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 actually 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.

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# **Annexure 3**

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**Declaration of independence,  
relevant relationship and indemnities**

**CORPORATIONS ACT 2001**

Section 436DA(2)

**SAS GLOBAL BALDIVIS LIMITED  
ACN 120 233 490**

**(Administrators Appointed)(Receivers and Managers Appointed)**

**DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND  
INDEMNITIES**

**Independence**

We, Martin Jones, Andrew Saker and Darren Weaver have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of SAS Global Baldivis Limited (“the Company”). This assessment identified no real or potential risks to our independence. We were not aware of any reasons that would prevent us from accepting this appointment.

**Relevant Relationships**

Aside from the notes below, none of Martin Jones, Andrew Saker and Darren Weaver and our firm, have, or have had within the preceding 24 months, any relationships with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any other person or entity that has a charge on the whole or substantially whole of the Company’s property.

For completeness, we note that:

- Martin Jones, Andrew Saker and Darren Weaver have also been appointed as Joint and Several Voluntary Administrators pursuant to Section 436A of the Act of the following companies which shares common Directorships:

<b>Company Name</b>	<b>Appointment date</b>
SAS Global Coogee Ltd ACN 125 069 874 (Administrators Appointed) (Receivers and Managers Appointed)	11 November 2009
SAS Global Seville Grove Ltd ACN 123 755 859 (Administrators Appointed) (Receivers and Managers Appointed)	11 November 2009
SAS Global Mandurah Ltd ACN 117 669 468 (Administrators Appointed) (Receivers and Managers Appointed)	11 November 2009
SAS Global Mosman Park Equity Ltd ACN 124 508 596 (Administrators Appointed)	11 November 2009

- Martin Jones has also been appointed as Administrator pursuant to Section 436A of the Act of the following company which shares common Directorships:

<b>Company Name</b>	<b>Appointment date</b>
SAS Global Mosman Park Ltd ACN 124 033 889 (Administrators Appointed) (Receivers and Managers Appointed)	13 November 2009

**Prior Engagements with the Insolvent**

Martin Jones, Andrew Saker and Darren Weaver and any of our Firm, have not undertaken any prior engagements for the Company. Martin Jones had several

informal conversations with the Directors in the days leading up to the acceptance of the appointment as Administrators' for which no invoice was raised.

From time to time we provide professional advice, either formally or informally to the secured creditor, National Australia Bank Ltd ("NAB") who holds a fixed and floating charge on the whole or substantially whole of the Company's property, however, we have had no involvement with National Australia Bank Ltd in direct relation to the Company and note that the NAB has appointed Brian McMaster and Mark Mentha of KordaMentha as Receiver and Managers of the company on 9 November 2009.

There are no other prior professional relationships or engagements that should be disclosed.

### **Indemnities**

Martin Jones, Andrew Saker and Darren Weaver have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute.

Dated this 3<sup>rd</sup> day of December 2009.

A handwritten signature in black ink, appearing to read 'M. Jones', with a large, sweeping loop underneath.

MARTIN JONES  
Joint and Several Administrator of  
SAS Global Baldivis Limited