

Statutory Report to Creditors

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220 ('OTMG')
OTM Civil Construction Group Trust

Dated: 21 December 2021

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Glossary of Terms

In this report the following terms have special meaning:

Term	Meaning
\$	Australian Dollars
ACN	Australian Company Number
Act	The Corporations Act (2001)
ALLPAAP	All present and after acquired property
ANZ	Australia and New Zealand Banking Group Ltd
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Bank of South Australia	Bank SA
CFO	Chief Financial Officer
COI	Committee of Inspection
Department	Attorney-General's Department
Directors	Shane Maunder and Scott Stedall
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities
ERV	Estimated Realisable Value
FEG	Fair Entitlements Guarantee
IPR	Insolvency Practice Rules (Corporate)
IPS	Insolvency Practice Schedule (Corporate)
Liquidator	Mark Lieberenz
PMSI	Purchased money security interest
PPSA	Personal Property Security Act (2009)
PPSR	Personal property security register
OTMC	OTM Civil Construction Pty Ltd (In Liquidation)
OTMC Trust	OTM Civil Construction Trust
OTMG	OTM Civil Construction Group Pty Ltd (In Liquidation)
OTMG Trust	OTM Civil Construction Group Trust
OTM Group	Collectively OTMC and OTMG
Receiver	Mark Lieberenz
ROCAP	Report on Company Activities and Property

1.0 Introduction

I refer to my Initial Information to Creditors dated 29 September 2021 in which I advised you of my appointment as Liquidator of the OTMG and the related entity OTMC and your rights as a creditor in the liquidation.

The report provides specific information conforming with the requirements of rule 70-40 of the IPR as follows.

IPR Requirement	Section
Inquiries relating to the winding up of OTMG that have been undertaken to date	2,3,4
The estimated amounts of assets and liabilities of OTMG	3
Further inquiries relating to the winding up of OTMG that may need to be undertaken	3
What happened to the business of OTMG	2.1
The likelihood of creditors receiving a dividend before the affairs of OTMG are fully wound up	6
Possible recovery actions	4

2.0 Background

2.1 Company History

OTMG was incorporated on 11 November 2015 by the Directors and is the trustee of the OTMG Trust.

OTMG operated a civil construction business from Clare, South Australia in association with the related entity, OTMC. OTMG was responsible for the civil construction operations of the OTM Group, the employment of staff and entering into lease agreements for rental premises.

OTMC, as trustee of the OTMC Trust, was the asset holding entity for the OTM Group, owning the plant and equipment, as well as two real properties. OTMC rented plant, equipment and motor vehicles to OTMG to undertake the active operations of the OTM Group.

Prior to my appointment, OTMG was undertaking civil construction works at various sites in South Australia, as summarised below:

- Port Lincoln / Tumby Bay – road works including overtaking lanes from three site locations;
- Port Augusta – Solar Farm construction works;
- Port Augusta – Substation works; and
- Orroroo Local Council – road works.

OTMG ceased operations on all work sites on 17 September 2021 and has not traded since my appointment.

In August 2021, I met with the Directors together with the CFO for the OTM Group to discuss the financial affairs for the OTM Group and outline options available to them.

The Directors sought additional funding to support the ongoing trading of the OTM Group from the ANZ in September 2021, however, following notification by the ANZ that this application was unsuccessful, I was appointed as liquidator of the OTM Group on 21 September 2021.

2.2 Cause of Failure

The Directors attributed the failure of OTMG to the inability to secure additional funding for the OTM Group. The need for additional funding arose from cost overruns on a major civil construction project, largely resulting from adverse weather conditions, as well as impacts on the OTM Group from the Covid-19 pandemic.

I attribute the failure of OTMG to trading losses, the inability to source alternative finance, high cash expenditure and the cost overruns on a major civil construction project.

2.3 Appointment as Receiver

As a result of the terms of the OTMG Trust Deed, OTMG ceased to be the Trustee of the OTMG Trust when I became liquidator of OTMG. Without a Trustee, there is no person with power to deal with the Trust assets.

Accordingly, I instructed my solicitor to apply to court to have myself appointed as Receiver of the OTMG Trust and OTMG Trust assets. This process required the preparation of lengthy affidavit material, a court appearance and notification of all affected parties.

On 28 September 2021, Judge Dart of the Supreme Court of South Australia made orders that I be appointed as Receiver which enabled me to deal with the OTMG Trust assets in my capacity as liquidator of OTMG.

3.0 Assets & Liabilities

Following my appointment as Liquidator, the Directors of OTMG were required to submit to me a ROCAP that set out OTMG's business, property affairs and financial circumstances. The ROCAP was received and is summarised in Table 3.0 below, together with my assessment of the ERV of OTMG's assets and liabilities.

Table 3.0 – Financial Position

	Report Reference	ROCAP	Liquidator's Estimate		Number of Claims
			ERV (High)	ERV (Low)	
		\$	\$	\$	
Assets					
Cash at Bank / Cash on Hand	3.1	128,850	75,486	75,486	
Debtors	3.2	946,669	1,087,770	328,923	
Bank Guarantee / Retentions	3.3	551,510	140,471	37,066	
Plant & Equipment	3.4	Nil	Nil	Nil	
Stock	3.5	Nil	Nil	Nil	
Related Party Loan Accounts	3.6	Nil	360,678	Nil	
Other Assets	3.7	Nil	921	921	
Total Assets		1,627,029	1,665,326	442,396	
Liabilities					
Secured Liabilities	3.8	Nil	340,000	Nil	22
		Nil	340,000	Nil	
<i>Priority Liabilities</i>					
Employees	3.9	155,602	524,790	524,790	48
		155,602	524,790	524,790	
<i>Unsecured Liabilities</i>					
ATO	3.10	Nil	342,632	342,632	1
Unrelated Unsecured Creditors		3,635,771	5,408,897	5,949,787	120
Secured party deficiency	3.8		Nil	500,000	1
Related-Party Loan			Nil	Nil	Nil
Non-Priority Related Employees			161	161	1
		3,635,771	5,751,690	6,792,580	123
Total Liabilities		3,791,373	6,616,480	7,317,370	
Net Surplus/(Deficiency)		(2,164,344)	(4,951,154)	(6,874,973)	

Source: Liquidator's Estimates of ERV

Subject to extent of asset realisations, recoveries made, creditor claims and costs of liquidation

3.1 Cash

OTMG operated four pre-appointment transactional accounts as detailed below.

Bank	Held By	Account Type	Balance advised by bank (\$)
ANZ	OTMG Trust	Savings Account	Nil
ANZ	OTMG Trust	Cheque Account	(883,125)
Bank SA	OTMG Trust	Freedom Business Account	75,399
Bank SA	OTMG Trust	Business Saver	Nil
Cash on hand			87

Following my appointment, the ANZ advised that the overdraft facility was drawn to \$883,125 and had a limit of \$900,000. This facility was secured by the ANZ's ALLPAAP security registration and is discussed further in section 3.8 of this report.

Credit funds from the Bank SA Freedom Business Account, together with OTMG's remaining cash on hand totalling \$87, were transferred to the liquidation account following my appointment.

I am not aware of any other bank accounts held by OTMG at the date of my appointment.

3.2 Debtors

On appointment, I was provided with a listing of OTMG's debtors as well as copies of the corresponding invoices for each outstanding debt. OTMG's debtors listing disclosed 7 customers with an outstanding debt totalling \$946,669. The Directors advised of two additional progress claims, which had reached an approval stage but which had not been invoiced at the date of my appointment totalling \$151,101. I arranged for the invoices to be raised and sent to the debtor. The raising of these invoices revised the total debts owed to OTMG as at the date of my appointment to \$1,087,770.

On 28 September 2021, I informed debtors of my appointment and issued an initial demand for the outstanding balances. To date, I have recovered \$328,923 and advise that the 3 remaining debtor claims have been disputed. I have obtained assistance from the Directors to locate evidence relating to the progress and works performed for the remaining debtors.

3.3 Bank Guarantee / Retentions

OTMG provided \$825,442 in bank guarantees for completed and in progress projects pursuant to the contractual arrangements to cover any defects on works undertaken by OTMG. The books and records of the OTMG disclose that the bank guarantees are supported by term deposits of which \$140,471 are held with Bank SA and \$411,039 held with the ANZ.

The Directors concluded in their ROCAP that the term deposits totalling \$551,510 should be recoverable in the liquidation following the expiration of the respective defects' liability periods.

Following my appointment, I wrote to those customers with retention claims which had reached the release date and sought the return of the bank guarantee or the release of the term deposit. To date I have recovered a term deposit totalling \$37,066, this amount has been included in the ERV Low scenario.

I have reviewed the retention claims and note that for the completed works where the bank guarantees and term deposits are held with Bank SA, in the event no claims are made during the defects' liability period, the term deposit funds will be recoverable. The \$140,471 has been included in the ERV High scenario.

In regard to the term deposits held with the ANZ, \$147,637 is held in support of bank guarantees for partially completed projects. I anticipate that the bank guarantee will be called upon as a result of OTMG's breach of contract resulting in no funds being available following the expiration of the defects liability period.

Finally in respect to the term deposits totalling \$263,402 held with the ANZ for completed projects, the ANZ, pursuant to their registered security interest and the right of set off, will apply the term deposits in the reduction of the liabilities incurred following the presentation of some of the bank guarantees and/or the overdraft which totalled \$883,125 as the date of my appointment. In the event the ANZ debt is discharged in full as a result of the realisation of the assets in OTMC, the related entity, then the term deposits in support of bank guarantees surrendered or not called upon, would flow to OTMG.

As at the date of my report, bank guarantees totalling \$477,871 have been called upon.

Based on the expected proceeds to be generated from the sale of the assets in OTMC, I do not anticipate that the ANZ debt will be discharged in full.

I will follow up the customers as the expiration dates for the defect liability periods expire and recover any funds that may be due. The final defect liability period associated with the projects undertaken by OTMG expire in December 2024.

3.4 Plant & Equipment

OTMG was not the registered owner of any motor vehicles or items of plant and equipment. OTMG paid a monthly rental for the use of plant, equipment and motor vehicles owned by the OTMC Trust.

3.5 Stock

The Directors advised that OTMG did not hold any stock as at the date of my appointment.

I note that a number of creditors held PPSR registrations for items of stock supplied to OTMG prior to my appointment however, as no stock remained in OTMG's possession at the date of my appointment, these claims are unsecured in the liquidation.

At the date of my appointment, some minor items of stock were in transit and claims in relation to this stock were resolved in a commercial manner on a case by case basis.

3.6 Related Party Loan Accounts

At appointment, OTMG's Xero accounting records disclosed that entities related to the Directors are indebted to OTMG for loan accounts totalling \$360,678.

I understand that a number of creditors are currently actively pursuing the Directors and their related entities in relation to personal guarantees provided in relation to amount owed by OTMG and accordingly, the Directors and their related entities may not have the capacity to repay the outstanding amounts in full.

I am continuing to investigate the amounts owed by the related entities to OTMG to determine whether these amounts will be recoverable.

3.7 Other Assets

Other assets realised in the liquidation comprised of bank refunds totalling \$226 and the refund of a rental bond in the amount of \$695.

3.8 Secured Creditors

The following table outlines the security interests registered against OTMG at the date of my appointment.

Secured Party	Number of registrations	Registration Type	Secured Amount at Appointment	Outcome
Acrow Formwork and Scaffolding Pty Ltd	1	Other Goods	Nil	No response
ANZ	8	2 ALLPAAP, 6 accounts	2,103,114	Cross-collateralised with OTMC assets Term deposits for bank guarantee retentions
Barossa Valley Irrigation Works Pty Ltd	1	Other Goods	Nil	No goods on hand small debt owing written off by creditor
Better Home Builders Pty Ltd	1	Other Goods	1,196	No response
Bianco Construction Supplies Pty Ltd	1	Other Goods	5,487	Defective registration
Big Chief Hire Pty Ltd	2	1 Motor Vehicle, Other Goods	5,415	No response
Boral Limited	1	Other Goods	93,877	No response
Cement Australia Limited	1	Other Goods	Nil	No response
Conplant Pty Ltd	2	1 Motor Vehicle, Other Goods	80,036	Equipment on hire collected
Construction Equipment Rentals Pty Ltd	3	1 Motor Vehicle, Other Goods Hire/Lease of Equipment	Nil	No response
Delta Rent Pty Ltd	4	4 Motor Vehicle	128,708	Equipment on hire collected
Downer EDI Works Pty Ltd	1	Other Goods	Nil	No response
Holcim (Australia) Pty Ltd	1	Other Goods	152,241	No response
Peri Australia Pty Ltd	1	Other Goods	Nil	Discharged
Prospa Advance Pty Ltd	1	ALLPAAP	Nil	Discharged
Rocla Pty Ltd	1	Other Goods	39,913	Defective registration
Tapex Industrial Pty Ltd	1	Other Goods	Nil	Discharged

OTMC as trustee for OTMC Trust	39	21 Motor Vehicle, 18 Other Goods	Related entity
The Trustee for The Adaptive Trust	1	Other Goods	Nil No response
Tradelink Pty Ltd	1	Other Goods	154 Proof of debt submitted
Western AG Supplies Pty Ltd	2	Other Goods	Nil No response
William Adams Pty Ltd	2	1 Motor Vehicle, Other Goods	Nil No response
	76		\$2,610,141

Following my appointment, I conducted a search of the PPSR which identified 22 secured parties with 76 separate registrations against OTMG. This included 39 PPSR registrations held by the related entity OTMC for motor vehicles and items of plant and equipment which were utilised by OTMG.

The majority of the creditors holding PPSR registrations related to the supply of stock to OTMG for civil construction works prior to my appointment. As noted in section 3.5 of this report, OTMG did not have any stock remaining at the date of my appointment and accordingly, these claims are unsecured in the liquidation.

ANZ held 8 registrations including 2 ALLPAAP registrations which supported banking facilities extended to the OTM Group and 6 accounts which related to bank guarantees for retention payments for completed construction works, as described in Section 3.3 of this report. Following the realisation of the properties in OTMC, the application of the term deposits and pre-appointment cash I estimate the deficiency to the ANZ will range between \$340,000 and \$500,000. Me estimates are reflected in the ERV High and low scenarios. Recoveries in OTMG are only available to the ANZ once the employee entitlements are paid in full pursuant to section 561 of the Act. In the ERV low scenario the debt to the ANZ is recorded as an unsecured debt since there are no recoveries available to satisfy the security.

3.9 Priority Liabilities

The Act affords employees a priority over non-preferred unsecured creditors in respect of unpaid employee entitlements. This priority is limited for excluded employees, including Directors and/or their relatives.

At the date of my appointment, OTMG employed 47 staff, including 2 employees related to one of the Directors. I have reviewed the employee records and the relevant awards under which the staff were employed and have calculated the priority entitlements as follows.

Table 3.8 – Employee Entitlements

	No. of Claims	Priority Claim (\$)	No. of Claims	Non Priority Claim (\$)	No. of Claims	Total (\$)
Wages	23	13,714	0	-	23	13,714
Annual Leave	25	128,840	0	-	25	128,840
Long Service Leave	3	36,310	0	-	3	36,310
PILN/Redundancy	24	254,318	0	-	24	254,318
Superannuation - Non Related	45	87,993	0	-	45	87,993
Superannuation - Related	2	3,614	1	161	2	3,775
Total	47	524,790	1	161	47	524,951

The Federal Government through the Department maintains the FEG scheme to make payment to employees with outstanding entitlements affected by the insolvency of their employer, excluding superannuation.

I have assisted the Department with the verification of the employee entitlements owed by OTMG and confirm that eligible employee entitlements, with the exception of superannuation, totalling \$399,186 have been paid via the FEG scheme. I note that the Department will have the same right of priority for the funds advanced as the former employees of OTMG.

Seven of OTMG's former employees had outstanding employment entitlements above the FEG capped amounts and one former employee was ineligible for FEG as they did not meet the eligibility criteria. These entitlements, totalling \$29,188, receive a priority under Section 556 should a dividend be payable in the liquidation.

The ATO is yet to submit a claim in the liquidation on behalf of the employees in regard to unpaid superannuation under the Superannuation Guarantee (Administration) Act 1992 however, I have estimated the amount that is outstanding to be \$91,607 based on the information available to date.

Pursuant to Section 556(1A) of the Act, directors and related parties (as defined in Section 9 of the Act) have their priority superannuation and wage claims restricted to \$2,000 per person. Also, pursuant to Section 556(1B) of the Act, directors and related parties' priority annual leave and long service leave claims are restricted to \$1,500 per person. Further, Section 556(1C) of the Act restricts directors and related parties from receiving a priority in relation to redundancy and pay in lieu of notice claims.

OTMG's outstanding superannuation liability includes an amount of \$161 payable above the \$2,000 capped amount payable as a priority for related parties. This amount will not receive a priority should a dividend be payable and will rank as an unsecured claim.

I advise that the Directors were not paid as employees and instead received a trust distribution, as such, no amounts are outstanding to the Directors in respect of employment entitlements.

3.10 Unsecured Creditors

The ROCAP provided by the Directors, included unsecured creditor claims totalling \$3,635,771.

Since the date of my appointment, further claims have become known. Subsequently, I set out below a summary of the unsecured creditor claims I anticipate in the liquidation.

Table 3.9 – Unsecured Creditors

Unsecured Creditors	No. of Claims	ROCAP (\$)	Liquidators Estimate ERV High (\$)	Liquidators Estimate ERV Low (\$)
ATO	1	Nil	342,632	342,632
Unrelated Unsecured Creditors	120	3,635,771	5,408,897	5,949,787
Secured party deficiency	1		Nil	500,000
Related-Party Loan	Nil	Nil	Nil	Nil
Non-Priority Related Employees	1	Nil	161	161
Total	123	3,635,771	5,751,690	6,792,580

I comment with respect to several of these claims as follows:

- The ERV High estimate for creditor claims is the current total value of unsecured claims, including proven and unproven creditors to date.
- The ERV Low estimate allows for a 10% increase in the currently known creditor claims to account for creditors who have not yet formally submitted a Proof of Debt or quantified their claim in the liquidation.

4.0 Investigations

Under the Act, one of my key responsibilities as Liquidator is to investigate and report on the past trading of OTMG with a particular focus on identifying transactions that may result in recoveries becoming available for the creditors of OTMG. Attached at **Annexure A** is a Creditor Information Sheet that details all of the recoverable transactions that I have considered.

Following my investigations, a report pursuant to Section 533(1) of the Act is provided to ASIC so that they are informed of the circumstances of the liquidation. I anticipate this report will be lodged within 3 months.

4.1 Approach to investigations

Throughout my investigations I attended to the following matters:

- Held discussions with the Directors;
- Held discussions with OTMG's accountant and CFO;
- Reviewed available books and records;
- Identified, reviewed, reconstructed where required and analysed financial information in both hard copy and electronic form;
- Engaged a forensic IT specialist to collect and preserve OTMG's cloud-based email records and Dropbox files;
- Undertook searches of various publicly available databases, including ASIC and Office of State Revenue records, etc;
- Spoke with creditors / stakeholders / employees;
- Undertook property and motor vehicle searches in the South Australia to determine whether OTMG was the registered owner of any motor vehicles or real property;
- Considered claims available to OTMG; and
- Corresponded with OTMG's employee, clients and suppliers of OTMG.

4.2 Adequacy of Books and Records

As a result of my investigations, I am required to form a view regarding the adequacy of books and records maintained by OTMG prior to the liquidation.

I have formed the view that the books and records of OTMG have been adequately maintained within the expectations of Section 286 of the Act.

4.3 Insolvent Trading Considerations

Section 588G of the Act imposes a duty upon directors to prevent a company from trading whilst insolvent. Section 588M of the Act allows a director to be made personally liable in certain circumstances for any loss suffered stemming from a debt incurred by OTMG whilst the company was insolvent.

It is necessary to consider the following matters when evaluating an insolvent trading claim:

- the date that a reasonable person should have suspected the company was insolvent;
- the defences a director may be able to bring in response to such a claim; and
- the director's ability to satisfy a compensation order if made.

Insolvency is best determined by considering a range of indicators of financial and non-financial indicators. I summarise below some of the indicators of insolvency accepted by the Court and ASIC that I have observed.

Table 4.3 – Insolvency Indicators

Indicator	Date relevant to insolvency	Comment
Unprofitable trading	July to September 2020 quarter	At the date of appointment, OTMG had already incurred trading losses of \$2,179,434 for the first quarter of the 2022 financial year. By 31 March 2021, OTMG had incurred losses for three (3) successive quarters and was unable to recoup the losses incurred in the following quarter.
Liquidity ratio below 1	30 September 2020 quarter	OTMG continued to operate with a working capital deficiency until I was appointed.
Creditors outstanding beyond trading terms	February 2021	Trade creditor invoices were generally paid on time or shortly after their due date however OTMG's statutory debt to the ATO exceeded 60 days and the overdraft account was close to its limit and remained this way from this point forwards.
Special arrangements with selected creditors	5 September 2019	OTMG entered into payment plans with the ATO to pay debt in instalments which continued until I was appointed.

Whilst my investigations into the insolvency of OTMG are ongoing my preliminary view is that OTMG became insolvent in March 2021, if not earlier, and incurred debts which remain outstanding whilst it was insolvent.

Creditors should note that the costs of pursuing an insolvent trading claim are significant, therefore, it is beneficial to consider the financial capacity of the Directors to satisfy a successful claim.

As part of my investigations, I conducted a property search in the name of the Directors of OTMG which revealed that Scott Stedall is not the registered proprietor of any real property in South Australia. Shane Maunder is the joint registered proprietor of a property in South Australia. The property is subject to a mortgage in favour of AFSH Nominees Pty Ltd and subject to 8 registered caveats which have been lodged by creditors of the OTM Group in accordance with personal guarantees provided by the Directors.

At this stage, consider that it may not be in the best interest of creditors to pursue an insolvent trading claim against the Directors of OTMG. The costs associated with pursuing an insolvent trading claim are significant and may result in reducing the funds available to priority creditors. Further, I consider that it is unlikely the Directors have the financial capacity to repay an insolvent trading claim.

4.4 Voidable Transactions

In the course of my investigations, I am required to ascertain whether there have been payments made to the creditors of OTMG that may have conveyed a preference, priority or advantage, that may result in recoveries that can be brought for the benefit of unsecured creditors.

I have conducted a review of the payments made to creditors in the six-month period prior to liquidation in order to form a view on the prospects of recovering monies as unfair preferences.

My investigations to date have identified payments in excess of \$530,000 which bare the hallmark of unfair preference payments. I will report further to creditors once my investigations have been completed.

4.5 Timeline

Further investigations of these claims will take approximately 5 months. I anticipate that the liquidation will continue until 2025 as a result of the final retention amounts being due for release in December 2024.

5.0 Receipts and payments to date

Attached in **Annexure B** are details of all receipts and payments in the liquidation for the period 21 September 2021 to 16 December 2021. As at 16 December 2021, cash at bank totals \$436,570.

6.0 Likelihood of a dividend

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- the size and complexity of the administration;
- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims; and
- the volume of enquiries by creditors and other stakeholders.

At this stage, I anticipate that a dividend to priority, employee creditors is likely to be declared in late 2022 / early 2023. In accordance with Section 561 of the Act, priority employee claims must be paid in priority over the claims of the ANZ, in respect of its ALLPAAP, from the circulating assets of OTMG.

I do not anticipate that sufficient funds will be realised in the liquidation to enable a dividend to be paid to OTMG's unsecured creditors without successful recoveries of legal claims discussed in Section 4 of this report .

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt included in **Annexure E**. This formalises your claim in the liquidation and is used to determine all claims against OTMG.

7.0 Cost of the liquidation

Attached in **Annexure C** is a detailed Remuneration Approval Report. I am unable to pay my remuneration without the approval of creditors or the court.

I propose to have my remuneration incurred in my role as liquidator approved by a proposal without a meeting. Information about passing resolutions without a meeting and a voting form is included in **Annexure D**.

I have also incurred fees and expenses in my capacity as Receiver for which I am entitled to have recourse to OTMG Trust property in accordance with the Court Order. I will be seeking approval of these fees and expenses from the Court rather than from creditors.

I have disclosed the quantum of my professional fees and expenses incurred in my capacity as Receiver in the Remuneration Approval Report attached at **Annexure C**.

8.0 What happens next?

I will proceed with the liquidation, including:

- realising the remaining assets, including debtors and OTMG's retention payments;
- recovering any further available property;
- completing my investigations into OTMG's affairs;
- if necessary, commencing and resolving any litigation; and
- completing my reporting to ASIC.

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

I anticipate that the liquidation will continue until 2025 as a result of the final retention amounts being due for release in December 2024.

9.0 Where can you get more information?

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

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

Please feel free to contact my office should you have any queries in this regard. There is also information about this liquidation on my firm's website: www.hplca.com.au using the password: **OTMG3184**.

Dated this 21st day of December 2021



Mark Lieberenz
Liquidator

Contact: Victoria Young
Email: vyoung@hplca.com.au

Encl.

Statutory Report to Creditors

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220

Annexure A

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

A summary of offences under the Corporations Act that may be identified by liquidators or administrators:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4) / 453F 475(9)) / 497(4) / 530A – 530B	Failure by directors to assist, deliver records and provide information.
438C(5) / 477(3) / 530B	Failure to assist, deliver up books and records and provide information.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
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.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

Recoverable Transactions

Preferences

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

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

**Must be greater than \$30,000 for unrelated creditors in a simplified liquidation*

Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.



To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

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

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

Unreasonable payments to directors

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

Voidable charges

Certain charges over company property are voidable by a liquidator:

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

Insolvent trading

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

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

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

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

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

The director may also be able to avail themselves of safe harbour, if they meet certain conditions.

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.

Queries about the external administration should be directed to the insolvency practitioner's office.

Statutory Report to Creditors

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220

Annexure B

Receipts and Payments

OTM Civil Construction Group Pty Ltd (In Liquidation)

Receipts and payments for the period 21 September 2021 to 16 December 2021

Account	GST	Total
NON-TRADING RECEIPTS		
Accounts Receivable (Pre-Appointment)		328,922.64
Bank Account Refund		178.70
Bond Refund		694.68
Cash at Bank		75,399.34
Cash on Hand		86.50
Incorrectly Deposited Funds		900.00
Refund of Bank Charges		47.69
Retentions		37,066.42
	0.00	443,295.97
NON-TRADING PAYMENTS		
Bank Charges		(4.25)
Legal Fees	(400.00)	(5,810.50)
Search Fee		(10.90)
Transfer to OTMC01 incorrectly deposited		(900.00)
		(6,725.65)
Net Non-Trading Receipts and Payments		436,570.32
Net Receipts (Payments)		436,570.32

Statutory Report to Creditors

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220

Annexure C

Remuneration Approval Report

OTM Civil Construction Group Pty Ltd (In Liquidation)

ACN 609 242 220

1.0 Summary

I am asking creditors to approve my remuneration of \$101,411.50 and disbursements of \$1,782.00.

I estimate that the total remuneration for the liquidation will be between \$140,000 and \$250,000. This is consistent with my previous estimate to creditors.

I will be seeking further approval of my remuneration once all assets have been realised, my investigations have been completed and I have attended to my statutory duties.

2.0 Declaration

I have undertaken an assessment of this remuneration and disbursement claim in accordance with the law and applicable professional standards. I am satisfied that the remuneration and disbursements claimed is necessary and proper.

I have reviewed the work in progress report for the liquidation to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

3.0 Remuneration sought

The remuneration I am asking creditors to approve is as follows:

For	Period	Amount	Rates to apply	When it will be drawn
Work I have already done	21 September 2021 to 16 December 2021	\$101,411.50 (excluding GST)	Provided in my IRN sent to creditors on 29 September 2021	The Liquidator can draw the remuneration on a monthly basis or as required.
	Total	\$101,411.50 (excluding GST)		

Details of the work already done are included at **Schedule A**.

Schedule B includes a breakdown of time spent by staff members on each major task for work I have already done.

Actual resolutions to be put to creditors are included at **Schedule C** for your information. These resolutions also appear in the proposal forms provided to you.

4.0 Disbursements sought

I am not required to seek creditor approval for costs paid to third parties or where I am recovering a cost incurred on behalf of the administration, but I must provide details to creditors. Details of these amounts are included in the attached Receipts and Payments (Refer Part 8 below).

I am required to obtain creditor's consent for the payment of a disbursement where I, or a related entity of myself, may directly or indirectly obtain a profit.

For more information about disbursements, please refer to the Initial Remuneration Notice sent to you on 29 September 2021.

I have undertaken a proper assessment of disbursements claimed for OTMG, in accordance with the law and applicable professional standards. I am satisfied that the disbursements claimed are necessary and proper.

The disbursements I would like creditors to approve is as follows:

For	Period	Amount
Disbursements I have already incurred	21 September 2021 to 30 November 2021	\$1,783.00
	Total	\$1,783.00

Details of the disbursements incurred and future disbursements are included at **Schedule D**. Actual resolutions to be put to creditors are also included at **Schedule D**. These resolutions also appear in the proposal form provided to you.

5.0 Receivership Remuneration and Disbursements

As a result of my appointment as Receiver of the Trust, an application must be made to the court for approval of my fees for any work involved with dealing and realising the assets of the Trust. My fees for the Receivership from 21 September 2021 to 16 December 2021 total \$28,838.00 I will be seeking approval from the court in due course.

Schedule B includes a breakdown of time spent by staff members on each major task for work I have already done in the Receivership.

In addition, my disbursements in relation to the Receivership for the period of 21 September to 30 November 2021 were in respect to the travel from my office to Clare to coordinate the return of assets. I will be seeking approval from the court in due course. To date my disbursements in the Receivership are approximately \$576.00.

6.0 Likely impact on dividends

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

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

At this stage of the Liquidation there is not sufficient funds to pay a dividend to unsecured creditors. If I do declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt.

7.0 Remuneration recovered from external sources

I have assisted the Department with the administration and payment of the FEG for employees. Whilst creditor approval is not required, I advise that I have received \$9,520 (excl GST) from the Department in relation to this, however the time required in relation to these tasks exceeded the amount received from Department. Accordingly, the additional amount of remuneration has been included in the remuneration claim for approval.

I advise that I have not received any indemnity, guarantee or contribution from a member, director or any other party related to OTMG or its Directors for my fees and expenses.

I advise that I have not received funding from any other source.

8.0 Report on Progress of the Administration

A report on the progress of this liquidation accompanies this Remuneration Approval Report.

9.0 Summary of Receipts and Payments

A summary of the receipts and payments for the liquidation accompanies this Remuneration Approval Report.

10.0 Queries

If you have any queries in relation to the information in this report, please contact my staff on (08) 7089 0011.

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

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au [search for INFO 85]

Further supporting documentation for my remuneration claim can be provided to creditors on request.

Dated this 21st day of December 2021



Mark Lieberenz
Liquidator

Attachments:

Schedule A – Details of work

Schedule B – Time spent by staff on each major task

Schedule C – Resolutions

Schedule D - Disbursements

Schedule A

Details of work

Resolution 1: 21 September 2021 to 16 December 2021

Task Area	General Description	Includes
Assets 15.90 hours \$5,894.00	Plant and Equipment	<ul style="list-style-type: none"> ▪ Correspondence with Director regarding any assets owned by the Company
	Assets subject to specific charges	<ul style="list-style-type: none"> ▪ Creating and maintaining security interest register ▪ Review PPSR registrations ▪ Correspondence with solicitor with respect to effectiveness of PPSR registrations ▪ Assessing Trust Deed ▪ Instruction solicitor ▪ Reviewing affidavit material ▪ Attendance on information requests of legal advisors ▪ Attendance at Court for application to appoint self as Receiver ▪ Inspection of leasehold properties
	Debtors	<ul style="list-style-type: none"> ▪ Correspondence with debtors ▪ Exporting, reviewing and assessing debtors' ledgers ▪ Correspondence with Directors regarding claims ▪ Creating and maintaining debtor register
	Stock	<ul style="list-style-type: none"> ▪ Review stock on hand ▪ Arrange for sale of stock auction ▪ Deal with creditors seeking return of stock in transit at date of appointment
	Other Assets	<ul style="list-style-type: none"> ▪ Discussions with employee regarding hired assets ▪ Correspondence with hire companies to coordinate collection of assets ▪ Discussion with property agents regarding assets owned by the landlord ▪ Review of bank statements ▪ Arrange for funds to be deposited to liquidation holding account

Task Area	General Description	Includes
Creditors 79.70 hours \$27,910.00	Creditor Enquiries, Requests & Directions	<ul style="list-style-type: none"> ▪ Receive and respond to creditor enquiries ▪ Maintaining creditor request log ▪ Review and prepare initial correspondence to creditors and their representatives ▪ Documenting ▪ Considering reasonableness of creditor requests ▪ Compiling information requested by creditors
	Secured creditor reporting	<ul style="list-style-type: none"> ▪ Notifying PPSR registered creditors of appointment ▪ Preparing reports to secured creditor ▪ Responding to secured creditor's queries ▪ Reviewing registrations ▪ Correspondence with auctioneer regarding creditor assets ▪ Responding to secured creditor's queries
	Creditor reports	<ul style="list-style-type: none"> ▪ Preparing initial report by Liquidator ▪ Preparing Statutory Report by Liquidator ▪ Send urgent circular to creditors ▪ Drafting remuneration report
	Dealing with proofs of debt	<ul style="list-style-type: none"> ▪ Receipting and filing POD when not related to a dividend
	Meeting of Creditors	<ul style="list-style-type: none"> ▪ Attendance at Regional Development Australia Eyre Peninsular to discuss the liquidation with creditors affected by Port Lincoln and Tumby Bay Projects
	Proposals to Creditors	<ul style="list-style-type: none"> ▪ Preparing proposal notices and voting forms ▪ Forward notice of proposal to all known creditors ▪ Reviewing votes and determining outcome of proposal ▪ Preparation and lodgement of proposal outcome with ASIC
	Other Creditor Matters	<ul style="list-style-type: none"> ▪ Updating creditor details in INSOL ▪ File review prior to creditor meeting ▪ Prepare summary notes on creditor meeting
Employees 71.90 hours \$23,896.50	Employees enquiries	<ul style="list-style-type: none"> ▪ Meeting with employees to discuss appointment and coordinate collection of employee records and information ▪ Discussion with staff regarding process of FEG and calculation of entitlements ▪ Receive and follow up employee enquiries via telephone ▪ Maintain employee enquiry register ▪ Review and prepare correspondence to creditors and their representatives via email and post

Task Area	General Description	Includes
		<ul style="list-style-type: none"> ▪ Preparation of letters to employees advising of their entitlements and options available
	FEG	<ul style="list-style-type: none"> ▪ Correspondence with FEG ▪ Preparing notification spreadsheet ▪ Following up additional information required from employee ▪ Draft circular to subcontractors on claiming through FEG ▪ Preparing FEG quotations ▪ Completing FEG questionnaires
	Calculation of entitlements	<ul style="list-style-type: none"> ▪ Calculating employee entitlements ▪ Calculating superannuation ▪ Reviewing employee files and company's books and records ▪ Reviewing awards ▪ Liaising with solicitors regarding entitlements ▪ Review and approve employment entitlements assessments
	Other employee issues	<ul style="list-style-type: none"> ▪ Travel for attendance in Clare ▪ Creating and maintaining employee listing ▪ Extracting employee information from Xero and dropbox ▪ Discussion on verification of former employees ▪ Finalising information to sub-contractors ▪ Reviewing subcontractor agreements ▪ Internal meeting regarding employee entitlements ▪ Correspondence with Child Support ▪ Correspondence with Centrelink
<p>Investigation 85.10 hours \$24,194.50</p>	Conducting investigation	<ul style="list-style-type: none"> ▪ Collection of company books and records ▪ Reviewing company's books and records ▪ Review the company's bank statements ▪ Review ATO Freedom of Information ▪ Review and preparation of company nature and history ▪ Conducting and summarising statutory searches ▪ Preparation of comparative financial statements ▪ Preparation of hypothetical bank balance ▪ Determining whether the directors have traded whilst insolvent and if so, from what date ▪ Review of specific transactions and liaising with directors regarding certain transactions

Task Area	General Description	Includes
		<ul style="list-style-type: none"> ▪ Considering whether directors have committed any offences or breached the Act ▪ Review of possible antecedent transaction recoveries ▪ Preparation of investigation file ▪ Unfair preference review and compiling supporting documentation ▪ Reviewing DropBox and email accounts for credit applications and director guarantee documents ▪ Reviewing WIP projects ▪ Extracting data from Procure ▪ Sourcing emails for to support debtor investigations ▪ Securing and extracting electronic records ▪ Reviewing DropbX and email accounts for credit applications and director guarantee documents
	Litigation / Recoveries	<ul style="list-style-type: none"> ▪ Internal meetings to discuss application to court ▪ Review legal advice regarding application to court
	ASIC reporting	<ul style="list-style-type: none"> ▪ Assisting CFO and Director prepare Form 509 ▪ Review and finalise ASIC lodgements
Dividend 0.40 hours \$74.00	Processing proofs of debt	<ul style="list-style-type: none"> ▪ Receipt of POD ▪ Adjudicating POD
Administration 65.80 hours \$19,442.50	Correspondence	<ul style="list-style-type: none"> ▪ Preparation of correspondence with creditors and other stakeholders ▪ Telephone attendance to process payments for searches ▪ Australia post mail redirection ▪ Filing all inwards and outbound correspondence, e-mails, diary notes and other correspondence in accordance with the Heard Phillips Lieberenz standard filing methodology
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> ▪ Monthly administration reviews ▪ Internal meeting to strategise and review progress ▪ Filing of documents ▪ File reviews ▪ Updating checklists
	Insurance	<ul style="list-style-type: none"> ▪ Identification of potential issues requiring attention of insurance specialists ▪ Correspondence with insurer regarding initial and ongoing insurance requirements

Task Area	General Description	Includes
	Bank account administration	<ul style="list-style-type: none"> ▪ Preparing correspondence opening and closing accounts ▪ Requesting bank statements ▪ Preparation of cheques and payments ▪ Depositing petty cash
	ASIC forms	<ul style="list-style-type: none"> ▪ Preparing and lodging ASIC forms
	ATO and other statutory reporting	<ul style="list-style-type: none"> ▪ Notification of appointment ▪ Correspondence with ATO ▪ Preparing BAS
	Planning / Review	<ul style="list-style-type: none"> ▪ Discussions regarding status of administration
	Books and records / storage	<ul style="list-style-type: none"> ▪ Dealing with records in storage ▪ Prepare books and records listing ▪ Transporting books and records to Liquidator's office ▪ Sending job files to storage
		Total: \$101,411.50

Schedule B

Resolution 1 Liquidation Remuneration: 21 September 2021 to 16 December 2021

Employee Name	Employee Position	Hourly Rate \$ (ex GST)	Total Actual Hrs (\$)	Assets Hrs (\$)	Creditors Hrs (\$)	Employees Hrs (\$)	Trade On Hrs (\$)	Investig. Hrs (\$)	Dividend Hrs (\$)	Admin Hrs (\$)
Cordingley Braydon	Undergraduate	185.00	36.40 \$6,734.00	0.10 \$18.50	4.40 \$ 814.00	0.00 \$0.00	0.00 \$0.00	18.70 \$3,459.50	0.40 \$74.00	12.80 \$2,368.00
Heard Andrew	Director	490.00	1.30 \$637.00	0.00 \$0.00	0.20 \$98.00	0.00 \$0.00	0.00 \$0.00	0.00 \$0.00	0.00 \$0.00	1.10 \$539.00
Heywood-Smith Esther	Administration Assistant	185.00	14.20 \$2,627.00	0.00 \$0.00	5.20 \$ 962.00	0.00 \$0.00	0.00 \$0.00	1.40 \$259.00	0.00 \$0.00	7.60 \$1,406.00
Ierace Rocco	Undergraduate	185.00	13.20 \$2,442.00	0.00 \$0.00	3.50 \$647.50	0.00 \$0.00	0.00 \$0.00	9.70 \$1,794.50	0.00 \$0.00	0.00 \$0.00
Jeffery Matthew	Senior Accountant	285.00	53.00 \$15,105.00	4.60 \$1,311.00	2.70 \$ 769.50	0.30 \$85.50	0.00 \$0.00	39.70 \$11,314.50	0.00 \$0.00	5.70 \$1,624.50
King Tina	Administration Manager	285.00	64.70 \$18,439.50	3.40 \$ 969.00	5.50 \$1,567.50	51.00 \$14,535.00	0.00 \$0.00	0.00 \$0.00	0.00 \$0.00	4.80 \$1,368.00
Krznaric Samantha	Graduate Accountant	230.00	0.80 \$ 184.00	0.00 \$0.00	0.80 \$184.00	0.00 \$0.00	0.00 \$0.00	0.00 \$ 0.00	0.00 \$0.00	0.00 \$ 0.00
Lieberenz Mark	Director	490.00	26.00 \$12,740.00	3.80 \$1,862.00	8.30 \$4,067.00	3.20 \$1,568.00	0.00 \$0.00	2.20 \$1,078.00	0.00 \$0.00	8.50 \$4,165.00
Phillips Anthony	Director	490.00	7.60 \$3,724.00	0.30 \$147.00	0.00 \$0.00	7.20 \$3,528.00	0.00 \$0.00	0.00 \$0.00	0.00 \$0.00	0.10 \$49.00
Williams Caitlin	Senior Accountant	285.00	49.90 \$14,221.50	0.90 \$ 256.50	23.80 \$6,783.00	3.50 \$997.50	0.00 \$0.00	0.40 \$114.00	0.00 \$0.00	21.30 \$6,070.50
Young Victoria	Associate Director	475.00	51.70 \$24,557.50	2.80 \$1,330.00	25.30 \$12,017.50	6.70 \$3,182.50	0.00 \$0.00	13.00 \$6,175.00	0.00 \$0.00	3.90 \$1,852.50
TOTAL			318.80 \$101,411.50	15.90 \$ 5,894.00	79.70 \$27,910.00	71.90 \$23,896.50	0.00 \$ 0.00	85.10 \$24,194.50	0.40 \$ 74.00	65.80 \$19,442.50
TOTAL INCLUDING GST			10,141.15 \$111,552.65							
Average hourly rate			318.10	370.69	350.19	332.36		284.31	185.00	295.48

Receivership Remuneration: 21 September 2021 to 16 December 2021

Employee Name	Employee Position	Hourly Rate \$ (ex GST)	Total Actual Hrs (\$)	Assets Hrs (\$)	Creditors Hrs (\$)	Employees Hrs (\$)	Trade On Hrs (\$)	Investig. Hrs (\$)	Dividend Hrs (\$)	Admin Hrs (\$)
Cordingley Braydon	Undergraduate	185.00	9.90 \$1,831.50	0.20 \$37.00	1.60 \$ 296.00	0.00 \$0.00	0.00 \$0.00	4.80 \$ 888.00	0.00 \$ 0.00	3.30 \$ 610.50
Heywood-Smith Esther	Administration Assistant	185.00	1.60 \$ 296.00	0.00 \$0.00	0.50 \$ 92.50	0.00 \$0.00	0.00 \$0.00	1.00 \$185.00	0.00 \$0.00	0.10 \$ 18.50
Jeffery Matthew	Senior Accountant	285.00	4.20 \$ 1,197.00	1.20 \$ 342.00	1.30 \$ 370.50	0.00 \$ 0.00	0.00 \$0.00	0.20 \$ 57.00	0.00 \$0.00	1.50 \$ 427.50
King Tina	Administration Manager	285.00	8.20 \$ 2,337.00	3.00 \$ 855.00	0.00 \$ 0.00	0.00 \$ 0.00	0.00 \$0.00	0.00 \$0.00	0.00 \$0.00	5.20 \$1,482.00
Krznaric Samantha	Graduate Accountant	230.00	4.10 \$ 943.00	0.00 \$0.00	0.00 \$ 0.00	0.00 \$0.00	0.00 \$0.00	3.80 \$874.00	0.00 \$0.00	0.30 \$69.00
Lieberenz Mark	Director	490.00	12.90 \$ 6,321.00	5.90 \$2,891.00	2.70 \$1,323.00	0.00 \$ 0.00	0.00 \$0.00	1.30 \$ 637.00	0.00 \$0.00	3.00 \$1,470.00
Williams Caitlin	Senior Accountant	285.00	24.50 \$ 6,982.50	19.00 \$5,415.00	1.70 \$ 484.50	0.00 \$ 0.00	0.00 \$0.00	0.00 \$ 0.00	0.00 \$0.00	3.80 \$1,083.00
Young Victoria	Associate Director	475.00	18.80 \$ 8,930.00	8.40 \$3,990.00	0.80 \$ 380.00	0.00 \$ 0.00	0.00 \$0.00	3.80 \$1,805.00	0.00 \$0.00	5.80 \$2,755.00
TOTAL			84.20 \$ 28,838.00	37.70 \$13,530.00	8.60 \$ 2,946.50	0.00 \$ 0.00	0.00 \$ 0.00	14.90 \$ 4,446.00	0.00 \$ 0.00	23.00 \$ 7,915.50
TOTAL INCLUDING GST			10,141.15 \$ 38,979.15							
Average hourly rate			342.49	358.89	342.62			298.39		344.15

Schedule C

Resolution 1: 21 September 2021 to 16 December 2021

“That the remuneration of the Liquidator from 21 September 2021 to 16 December 2021 be fixed at a sum equal to the cost of the time spent by the Liquidator and his partners and staff, calculated at the hourly rates detailed in the report to creditors dated 29 September 2021, in the sum of \$101,411.50 (GST Exclusive), and that the liquidator can draw the remuneration on a monthly basis or as required.”

Schedule D

Current disbursements incurred by my firm are as follows:

		Disbursements already incurred	
Period	21 September 2021 to 30 November 2021		
Amount (ex GST)			\$
Disbursement type	Basis		
Advertising	At Cost		\$64
ASIC Fees	Refer below		\$240
Courier	At Cost		
Mail Redirection	At Cost		\$432
Photocopies	\$0.50 per page		\$397
Postage	At Cost		\$228
Search Fees (Company & Property Searches)	At Cost		\$134
Software	At Cost		\$31
Stationery			
- Folders	\$8.00 per folder		\$72
- File Index	\$8.00 per set of 1-31 or A-Z		\$32
- Archive Box	\$5.00 per box		\$153
Storage & Destruction of Books & Records			
- Storage	\$1.00 per box/month		
- Destruction	\$10.50 per box		
Transport to/from archives & other collection costs	At Cost		
Staff vehicle use	Per ATO guidelines		
Travel Allowance for overnight stay	\$50.00 per person		

ASIC Industry Funding Levy

ASIC uses information provided by liquidators to determine an entity's share of the annual cost of regulating the profession. ASIC determines this share only after the financial year has concluded and invoices are issued to registered liquidators retrospectively. The invoice includes a fixed amount per liquidator and a variable component which is pro-rated based on various "metric events" which occur during a formal appointment. To account for this future cost, we have estimated a figure of \$240 per metric event which encompasses our estimate of both the fixed and variable cost to be invoiced by ASIC. As this is an estimate, it may include an element of profit.

Statutory Report to Creditors

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220

Annexure D

Index of Proposals by Notice

- Remuneration Approval from 21 September 2021 to 16 December 2021
- Approval for internal disbursements scale and disbursements from 21 September 2021 to 30 November 2021

Notice of Proposal Without a Creditors' Meeting

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220 ("OTMG")

1. Resolution 1

The following proposal is put to creditors for consideration:

"That the Liquidator's fees for the period from 21 September 2021 to 16 December 2021 be fixed at a sum equal to the cost of the time spent by the Liquidator and his partners and staff, calculated at the hourly rates detailed in the report to creditors dated 29 September 2021 in the sum of \$101,411.50 (GST Exclusive), and that the liquidator can draw the remuneration on a monthly basis or as required."

2. Reasons for proposal and the likely impact it will have on creditors if it is passed

The liquidator has incurred remuneration costs in the sum of \$101,411.50 (GST Exclusive) and now seeks approval for the payment of same.

The payment of the liquidator's remuneration reduces any amount payable to creditors (if any) by way of dividend.

Section 556 of the *Corporations Act 2001* ("Act") provides that remuneration of the liquidator is paid in priority to unsecured creditor claims.

The effect of approving my remuneration is to fix the liquidator's remuneration which is then paid in accordance with Section 556 of the Act. If the remuneration is not approved, at some future time I will make an application to Court to decide my remuneration, which application will incur further costs in the liquidation and may delay and reduce distributions, if any, to creditors.

3. Voting

Please place a tick in the box which applies:

- | | | |
|--------|--------------------------|--|
| Yes | <input type="checkbox"/> | I approve the proposal |
| No | <input type="checkbox"/> | I do not approve the proposal |
| Object | <input type="checkbox"/> | I object to the proposal being resolved without a meeting of creditors |

4. Signature

Name of creditor: _____ ACN / ABN (if applicable): _____

I am not a related creditor of OTMG.

I am a related creditor of OTMG (describe relationship):

Address: _____

Name of authorised person signing: _____

Signature: _____ Date: _____

Lodgement instructions

Please return, together with a completed proof of debt (if not already completed), to this office **by no later than 21 January 2022**.

Heard Phillips Lieberenz
Level 12, 50 Pirie Street
Adelaide SA 5000

Ph: (08) 7089 0011
www.hplca.com.au

Notice of Proposal Without a Creditors' Meeting

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220 ("OTMG")

1. Resolution 2

The following proposal is put to creditors for consideration:

"That the internal disbursements for the period from 21 September 2021 to 30 November 2021 be determined on the basis of the scale of internal disbursements detailed in the report to creditors dated 29 September 2021 up to a capped sum of \$1,783.00 (GST Exclusive), and that the liquidator can draw the disbursements, which includes an element of profit or mark up, on a monthly basis or as required. If the value of the disbursements exceeds the capped amount, the liquidator reserves the right to seek further disbursement approval from creditors."

2. Reasons for the proposal and the likely impact it will have on creditors if it is passed

Section 60-20(4) of Schedule 2 to *the Corporations Act 2001* ("Act") provides that without a resolution of creditors, an external administrator cannot derive a profit or advantage from the external administration. This prohibition does not relate to remuneration, but instead refers to disbursements that may be charged to an external administration by the administrator's firm that contains an element of profit in the charge.

The liquidator will incur out of pocket expenses and disbursements in the course of the external administration. Some internal disbursements charged by Heard Phillips Lieberenz include an element of profit to reflect the overhead cost recovery for the provision of the service. In these circumstances creditors must agree to the costs charged.

The payment of the liquidator's disbursements reduces any amount payable to creditors (if any) by way of dividend.

Section 556 of the Act provides that the costs of external administration are paid in priority to unsecured creditor claims.

The effect of approving my disbursements is to fix the liquidator's internal disbursements which are then paid in accordance with Section 556 of the Act. If the disbursements are not approved, at some future time I will make an application to Court to decide my disbursements, which application will incur further costs in the liquidation and may delay and reduce distributions, if any, to creditors.

3. Voting

Please place a tick in the box which applies:

- Yes I approve the proposal
- No I do not approve the proposal
- Object I object to the proposal being resolved without a meeting of creditors

4. Signature

Name of creditor: _____ ACN / ABN (if applicable): _____

- I am not a related creditor of OTMG.
- I am a related creditor of OTMG (describe relationship):

Address: _____

Name of authorised person signing: _____

Signature: _____ Date: _____

Lodgement instructions

Please return, together with a completed proof of debt (if not already completed), to this office **by no later than 21 January 2022**.

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Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
 - vote yes or no to the proposal, or
 - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency. This information is available from ARITA's website at artia.com.au/creditors.

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

Statutory Report to Creditors

OTM Civil Construction Group Pty Ltd (In Liquidation)
ACN 609 242 220

Annexure E

Form 535

Subregulation 5.6.49(2)

Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM
(GENERAL FORM)

To the Liquidator of OTM Civil Construction Group Pty Ltd (In Liquidation)

1. This is to state that the company was on 21 September 2021 and still is, justly and truly indebted

to¹ _____ for

_____ \$ (_____)

Particulars of the debt are:

DATE (include details of substantiating vouchers)	CONSIDERATION	AMOUNT	REMARKS

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following:

If any bills or other negotiable securities are held show them in the following schedule:

DATE	DRAWER	ACCEPTOR	AMOUNT \$	DUE

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

OR

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

I have attached the following documents (tick as many as appropriate):

- Invoices
- Judgement from court
- Orders from company
- Guarantee from company
- Other documents
- Monthly Statements
- Letters of Demand
- Statutory Demand
- Credit Application
- Creditor's authority letters

Dated:
Signature:
Occupation:
Address:

* Delete if this proof is made by the creditor personally.

¹ Insert name and address of creditor.