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26 September 2012

Mr Adrian Smythe  
Manager - ASX Listings  
ASX Compliance Exchange Centre  
20 Bridge Street  
SYDNEY NSW 2000

Dear Mr Smythe

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ("MTD")**  
**ACN 009 138 149**

Attached is a Report to creditors and Notice of Meeting to be held on 5 October 2012. This Report and Notice is released to Creditors on 26 September 2012.

Yours faithfully



David Levi  
Administrator, Metroland Australia Limited (Administrator Appointed)

**CIRCULAR TO CREDITORS**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED)  
ACN 009 138 149**

A creditors' meeting will be held at The Westin Sydney, Barnet Room 1, Level 6, 1 Martin Place Sydney NSW 2000 on 5 October 2012 at 11am (Eastern Standard Time).

The following documents are attached:

- Administrator's Report to Creditors dated 26 September 2012
- Notice convening the meeting (Form 529) including agenda
- Proof of debt Form 535
- Proxy Form 532

At the meeting, creditors will be entitled to vote to decide the future of the company by voting in favour of one of the following options:

- 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 (that is, placed into liquidation).

Creditors who intend to vote or be represented at the meeting are required to lodge a formal proof of debt and proxy form to Levi Consulting by the day prior to the meeting. If you have already lodged a proof, a second proof is not required. However a fresh proxy form is required for this meeting.

Documents should be sent to Levi Consulting preferably by email or fax.

Please contact Maria Clemente of my staff or me with any issues on telephone 02 8213 0880.

Dated 26 September 2012

Yours faithfully



David Levi  
Administrator

**D 02 9016 4113 | M 0418 602 466**

[dlevi@leviconsulting.com.au](mailto:dlevi@leviconsulting.com.au)

**FORM 529**  
*CORPORATIONS ACT 2001*

Subregulation 5.6.12(2)

**NOTICE OF MEETING OF CREDITORS**  
**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED)**  
**ACN 009 138 149**

Notice is given that a meeting of the creditors of the company will be held at The Westin Sydney, Barnet Room 1, Level 6, 1 Martin Place Sydney NSW 2000 on 5 October 2012 at 11am (Eastern Standard Time).

**AGENDA**

1. To consider the Report and Statement by the Administrator pursuant to Section 439A(4)(a), (b) and (c) of the Corporations Act.

2. To consider and approve:

“That the remuneration of the Administrator of Metroland Australia Limited for the period 31 August 2012 to 7 September 2012, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator’s firm, be approved in the amount of \$28,409 plus GST.”

3. To consider and approve:

“That the remuneration of the Administrator of Metroland Australia Limited for the period 8 September 2012 to 20 September 2012, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator’s firm, be approved in the amount of \$38,117 plus GST.”

4. To consider and resolve one of the following proposals for the company's future:

- (a) That the company enters into a Deed of Company Arrangement pursuant to Section 439C(a) of the Corporations Act in terms of the proposal for a Deed of Company Arrangement outlined as an Annexure to the Administrator's report;
- (b) That the administration end, pursuant to Section 439C(b); or
- (c) That the company be wound up pursuant to Section 439C(c).

5. To consider and approve:

“That the remuneration of the Administrator of Metroland Australia Limited for the period 21 September 2012 to the end of the Administration period, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator’s firm, be approved up to an amount of \$40,000 plus GST.”

6. To consider and approve:

“That if the Company is wound up, a Committee of Inspection be appointed and its number and composition be determined by creditors in person or by proxy at a creditors meeting.”

7. To consider and approve:

“That the remuneration of the Liquidator of Metroland Australia Limited, for the period from appointment, in respect of the appointee and his staff, be calculated at the hourly rates of the Liquidator’s firm, and approved up to an interim amount of \$35,000 plus GST.”

8. To consider and approve:

"That if the Company enters into a Deed of Company Arrangement, that the Company enter into a Deed of Company Arrangement pursuant to Deed Proposal (Offer 2)."

9. To consider and approve:

"That if the Company enters into a Deed of Company Arrangement, that the Company enter into a Deed of Company Arrangement pursuant to Deed Proposal (Offer 3)."

10. To consider and approve:

"That the remuneration of the Deed Administrator (if appointed) of Metroland Australia Limited for the period from appointment, in respect of the Deed Administrator and his staff, be calculated at the hourly rates of the Deed Administrator's firm, and approved up to an amount of \$20,000 plus GST."

11. To consider and approve:

"That the Liquidator (if appointed) be authorised to destroy the company's books and records, 6 months after deregistration of the company, subject to consent of the ASIC."

12. To consider any matter which may be properly brought before the meeting.

Dated 26 September 2012

David Levi  
Administrator

Australian Company Number: 145 020 300

**FORM 535**

Subregulation 5.6.49(2)

*Corporations Act 2001*  
**FORMAL PROOF OF DEBT OR CLAIM  
(GENERAL FORM)**

To the Administrator of Metroland Australia Limited (Administrator Appointed)

1. This is to state that the company was on 31 August 2012, and still is, justly and truly indebted to:

\_\_\_\_\_ *(full name and address of the creditor)* for

\$ \_\_\_\_\_ and \_\_\_\_\_ cents.

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

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

Date	Drawer	Acceptor	Amount \$c	Due Date

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

\* Do not complete '3' if this proof is made by the creditor personally (ie cross out both). Otherwise cross out the one which is inapplicable.

Dated \_\_\_\_\_  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Occupation \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Contact \_\_\_\_\_  
Email \_\_\_\_\_

Please return completed form by email to [dlevi@leviconsulting.com.au](mailto:dlevi@leviconsulting.com.au) or by fax 02 8088 7383, or by mail to Levi Consulting, GPO Box 4681, Sydney, NSW 2001.

**Proofs of Debt  
Notes for Your Guidance**

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

It is a creditor's responsibility to prove the claim in an Administration to the satisfaction of the Administrator.

When lodging claims, creditors must ensure that:

- (a) the proof of debt form is properly completed in every particular; and
- (b) documentary evidence such as detailed below is attached to the Form 535 or Form 536.

Please note that your debt is not likely to be accepted unless evidence to support its existence is provided. Detailed below are some examples of the type of debt creditors may be claiming and a suggested list of documents, copies of which should accompany a proof of debt for that class of creditor.

**Trade Creditors**

- Statements and supporting invoice(s) showing amount of debt;
- Advice(s) to pay outstanding invoice(s) (optional).

**Guarantees/Indemnities**

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

**Judgment Debt**

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

**Secured Debt**

- Security Documents (eg. mortgage);
- Statement showing amount of debt.

**Loans (Bank and Personal)**

- Executed loan agreement;
- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of Liquidation.

**Tax Debts**

- Documentation showing assessment of debt, whether it is an actual debt or an estimate, and breaking down penalties and primary debt.

**Employee Debts**

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

**Leases**

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

FORM 532  
Corporations Act 2001

Regulation 5.6.29

METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149

APPOINTMENT OF PROXY

I/We (1) \_\_\_\_\_ of

\_\_\_\_\_ a creditor/member of  
METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) appoint

(2) \_\_\_\_\_ or in his/her absence

(3) \_\_\_\_\_ as my/our general/special proxy to vote at  
the meeting of creditors to be held on 5 October 2012 at 11am or at any adjournment of that meeting.

- \* (i) This proxy is to be used as a general proxy to vote on all matters arising at the meeting, including the appointment of the proxy holder as a member of any Committee of Inspection.  
**Yes/No** (please circle your choice).

**OR**

- \* (ii) This proxy is to be used as a special proxy to vote on the following resolutions as specified:
- 2 "That the remuneration of the Administrator of Metroland Australia Limited for the period 31 August 2012 to 7 September 2012, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator's firm, be approved in the amount of \$28,409 plus GST."  
**In favour/against** (please circle your choice)
- 3 "That the remuneration of the Administrator of Metroland Australia Limited for the period 8 September 2012 to 20 September 2012, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator's firm, be approved in the amount of \$38,117 plus GST."  
**In favour/against** (please circle your choice)
- 4.(a) "That the company execute a Deed of Company Arrangement";  
**In favour/against** (please circle your choice)
- (b) "That the administration end";  
**In favour/against** (please circle your choice)
- (c) "That the company be wound up";  
**In favour/against** (please circle your choice)

- 5 "That the remuneration of the Administrator of Metroland Australia Limited for the period 21 September 2012 to the end of the Administration period, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator's firm, be approved up to an amount of \$40,000 plus GST."

**In favour/against** (please circle your choice)

6. "That, if the Company is wound up, a Committee of Inspection be appointed."

**In favour/against** (please circle your choice)

"That \_\_\_\_\_ (name proxy holder and/or any other persons) be nominated to act as a member of any Committee of Inspection, if so appointed."

**In favour/against** (please circle your choice)

"That \_\_\_\_\_ (name/s) be appointed as a member of the Committee of Inspection."

**In favour/against** (please circle your choice)

7. "That the remuneration of the Liquidator of Metroland Australia Limited, for the period from appointment, in respect of the appointee and his staff, be calculated at the hourly rates of the Liquidator's firm, and approved up to an interim amount of \$35,000 plus GST."

**In favour/against** (please circle your choice)

8. "That if the Company enters into a Deed of Company Arrangement, that the Company enter into a Deed of Company Arrangement pursuant to the Deed Proposal (Offer 2)."

**In favour/against** (please circle your choice)

9. "That if the Company enters into a Deed of Company Arrangement, that the Company enter into a Deed of Company Arrangement pursuant to Deed Proposal (Offer 3)."

**In favour/against** (please circle your choice)

10. "That the remuneration of the Deed Administrator (if appointed) of Metroland Australia Limited for the period from appointment, in respect of the Deed Administrator and his staff, be calculated at the hourly rates of the Deed Administrator's firm, and approved up to an amount of \$20,000 plus GST."

**In favour/against** (please circle your choice)

11. "That the Liquidator (if appointed) be authorised to destroy the company's books and records, 6 months after deregistration of the company, subject to consent of the ASIC."

**In favour/against** (please circle your choice)



Dated \_\_\_\_\_

Name \_\_\_\_\_

Signature \_\_\_\_\_

Telephone/mobile \_\_\_\_\_

Email \_\_\_\_\_

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**Certificate of witness**

(This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy)

I, \_\_\_\_\_, of \_\_\_\_\_ certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated \_\_\_\_\_

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

Description \_\_\_\_\_

Place of residence \_\_\_\_\_

**Please return completed form by email to [dlevi@leviconsulting.com.au](mailto:dlevi@leviconsulting.com.au) or by fax (02) 8088 7383, or by mail to Levi Consulting, GPO Box 4681, Sydney, NSW 2001.**

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**REPORT TO CREDITORS FOR SECOND MEETING OF CREDITORS  
CORPORATIONS ACT 2001 - SECTION 439A(4)**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED)  
ACN 009 138 149**

**26 SEPTEMBER 2012**

**1 Introduction**

The second meeting for Metroland Australia Limited ("MTD") will be held on 5 October 2012 at 11 am (Australian Eastern Standard Time) at The Westin Sydney, Barnet Room 1, Level 6, 1 Martin Place Sydney NSW 2000.

**Executive Summary**

This is a Report prepared pursuant to section 439A(4)(a), 439A(4)(b) and section 439A(4)(c) of the Corporations Act 2001 ("the Act").

The creditors' meeting to be held on 5 October 2012 pursuant to s439A(1) of the Act will provide to creditors the opportunity to make a decision pursuant to s439C of the Act.

Pursuant to section 439C of the Act, the creditors may resolve:

- " (a) that the company execute a Deed of Company Arrangement specified in the resolution (even if it differs from the proposed deed (if any) details of which accompanied the notice of meeting); or
- (b) that the administration should end; or
- (c) that the company be wound up."

At the creditors' meeting, creditors can also resolve to adjourn the meeting pursuant to s439B of the Act. If creditors resolve that the company execute a Deed of Company Arrangement (s439C(a) of the Act), then the Deed of Company Arrangement is required to be executed within 15 business days from the date of the passing of the resolution at the creditors' meeting (or at an adjourned meeting).

The company remains in voluntary administration until the date that the company enters into a Deed of Company Arrangement (or the date that the company enters into liquidation if creditors resolve that the company be wound up).

The purpose of this Executive Summary is to seek to simplify this report, which is detailed, arising from statutory obligations. The Executive Summary is not a substitute for reading the whole of the report.

Creditors can also contact me prior to the creditors' meeting on 5 October 2012 to discuss any aspects of the report or any aspects of the company's business, property, affairs and financial circumstances.

I now turn to the tangible assets of MTD at 31 August 2012 that are of commercial value. MTD had cash on deposit and cash at bank totalling \$82,000. In addition, it had the value of the MTD



ASX listed shell; and also, the value, estimated at \$50,000, of the wholly owned subsidiary Metroland Funds Management Limited. It had no other assets of commercial value. If a liquidator is appointed, a liquidator would consider any potential claims under Part 5.7B of the Act and Chapter 2D of the Act.

I now turn to the liabilities of MTD at 31 August 2012. The company has preferential employee related liabilities of about \$5,000; no liabilities to secured or partly secured creditors; and, unsecured liabilities comprising a liability for \$10.4m under a guarantee; unsecured liabilities (disputed) at \$353,000 (or more); and other unsecured liabilities of \$1.3m. The liability of \$10.4m is a liability to Perpetual Nominees Limited as Custodian of CFS Wholesale Pooled Managed Fund ("CFS").

This Report concludes that unsecured creditors are unlikely to receive any dividend in a liquidation scenario based on information known to me at the date of this Report, and that, in a Deed Proposal (in the forms included in this Report), unsecured creditors are likely to receive a dividend and a better outcome than in a liquidation scenario. Annexure 4 includes an analysis.

I now turn to discussion about the MTD listed shell.

MTD is listed on the ASX. Quotation of MTD's securities on ASX was suspended on 31 August 2012.

At 31 August 2012, it was anticipated that MTD may have value as a listed shell, potentially suitable for a backdoor listing of an operating business, subject to compliance with all applicable regulatory approvals. Advertisements were placed in the Australian Financial Review seeking expressions of interest. Responses were received from 35 parties.

Obtaining value for the listed shell typically involves a Deed Proposal between creditors and the company; a Creditors' Trust; an ordinary resolution of shareholders to approve issue of shares; and applicable regulatory approvals.

I have performed significant work to investigate the affairs of the company's business, property, affairs and financial circumstances, and also, such work and information as would enable me to provide to creditors information for them to make an informed decision about the choices in s439A(4)(i), (ii) and (iii) (deed or liquidation). I engaged lawyers upon my appointment to assist me.

Particularly, I have attended to all relevant statutory matters; ensured that the value of the listed shell was preserved; advertised for expressions of interest in the company shell including preparation of an information memorandum and liaised with interested parties that expressed interest; determined the financial position of the company on the basis of a liquidation and also on the basis of deed of company arrangement proposals; investigated potential recoveries by a liquidator, if a liquidator were appointed; considered proposals presented to me; completed this report and in doing so, complied with regulatory requirements and liaised with all relevant stakeholders.

The twenty largest shareholders of MTD are in many cases, I am told, known to one and other, and that, they control about 60% of the issued capital of MTD.



## **Layout of report**

This report is set out under the following principal headings:

- 1.0 Introduction
- 2.0 Background information
- 3.0 Current financial position
- 4.0 Deed Proposals
- 5.0 Investigation and possible recoveries
- 6.0 Deed of Company Arrangement
- 7.0 What Creditors May Decide
- 8.0 Administrator's Opinion in terms of section 439(4)(b) of the Law
- 9.0 Estimated return to creditors

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**Annexures to Report**

- Annexure 1 - Directors' Report as to Affairs as at 31 August 2012
- Annexure 2 - Estimated assets and liabilities as at 31 August 2012 prepared by Administrator
- Annexure 3 - Estimated creditors' claims as at 31 August 2012
- Annexure 4 - Administrator's estimated outcome as at 31 August 2012. Liquidation versus proposals for a Deed of Company Arrangement
- Annexure 5 - Summary of Administrator's receipts and payments
- Annexure 6 - Declaration - independence, relevant relationships and indemnities
- Annexure 7 - Remuneration
- Annexure 8 - Proposal for a Deed of Company Arrangement (Offer 2)
- Annexure 9 - MTD Group FY2011 Annual Report
- Annexure 10 - MTD Group Appendix 4D – "Half Year Report for the 6 months ended 31 December 2011– Results Announcement to the Market" dated 29 February 2012
- Annexure 11 - MTD Group Appendix 4E "Preliminary Report for the year ended 30 June 2012" and dated 31 August 2012
- Annexure 12 - Search - ASX Listed Company Information
- Annexure 13 - MTD Balance sheet (unaudited) as at 31 August 2012 with comparatives.

**Note**

Annexures 9, 10 and 11 are available for download free at the URL below. Alternatively, a copy can be obtained from me.

<http://www.asx.com.au/asx/statistics/announcements.do>

The reference for ASX purposes is MTD.

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**Definitions**

"The Act"	Corporations Act 2001 (Cth)
"AFSL"	Australian Financial Services License
"ASIC"	Australian Securities and Investments Commission
"Austino"	Austino Wentworthville Pty Limited ACN 146 623 421
"ASX"	Australian Stock Exchange
"CFS"	Colonial First State
"CFS"	Perpetual Nominees Limited as Custodian of CFS Wholesale Pooled Mortgage Fund
"DOCA"	Deed of Company Arrangement
"the Gaintrak Trust"	Gaintak Investment Unit Trust
"Global"	Global Real Estate Assets Corporation Pty Limited ACN 118 983 403
"the Global Trust"	Global Real Estate Assets Trust
"MFM"	Metroland Funds Management Limited ACN 134 682 876
"MMS"	Metroland Management Services Pty Ltd ACN 135 051 035
"MTD"	Metroland Australia Limited ACN 009 138 149
"MTD Group"	MTD and its Controlled Entities
"Stratawide"	Stratawide Management Pty Ltd ACN 102 395 022

## 2 Background Information

### 2.1 History of the company

I was appointed Administrator of Metroland Australia Limited ("**MTD**") on 31 August 2012 pursuant to s 436A of the Corporations Act 2001 ("**the Act**"). I have been appointed only in respect of MTD, and not in respect of any of MTD's subsidiaries.

I summarise the history of MTD below, based on advice from the directors and independent enquiry and investigation.

1. The records of the Australian Securities and Investments Commission ("**ASIC**") correctly indicate the directors and former directors of MTD.
2. MTD has been listed on the ASX since 1997. Quotation of MTD's securities on the ASX was suspended on 31 August 2012.
3. MTD Group's principal activities have included commercial property development and construction, property rental, residential strata management, and investment and financial services. MTD is the Parent Entity of MTD Group.
4. MTD's subsidiaries as at 31 August 2012 were Global Real Estate Assets Corporation Pty Limited ("**Global**"), Metroland Management Services Pty Ltd ("**MMS**") and Metroland Funds Management Limited ("**MFM**").
5. Global acts as trustee for Global Real Estate Assets Trust. At 31 August 2012, the principal asset of Global was a property at Campbelltown. Conditional Contracts of Sale were exchanged for the sale of the property prior to 31 August 2012. The sale price will not be sufficient to pay the mortgagee in full. Global does not have any other assets of commercial value.
6. MMS supplied property and building related services and products. MMS has no assets of commercial value.
7. MFM was dormant at 31 August 2012. MFM holds an Australian Financial Services License ("**AFSL**"). The assets of MFM with commercial value are the value of a cash bond of \$50,000. MFM has no known liabilities. MFM has net assets of \$50,000.
8. The assets of MTD at 31 August 2012 comprised cash at bank and on deposit totalling \$82,000. In addition, it had the value of the MTD ASX listed shell, and also, the value, estimated at \$50,000 of a wholly owned subsidiary, Metroland Funds Management Limited. It held no other assets of commercial value.
9. I now turn to the liabilities of MTD at 31 August 2012. The company has preferential employee related liabilities of about \$5,000; no liabilities to secured or partly secured creditors; and, unsecured liabilities comprising a liability for \$10.4m under a guarantee; unsecured liabilities (disputed) at \$353,000 (or more); and other unsecured liabilities of \$1.3m. The liability of \$10.4m is a liability to Perpetual Nominees Limited as Custodian of CFS Wholesale Pooled Managed Fund ("**CFS**").
10. It is envisaged that MTD may have value as a listed shell, potentially suitable for a backdoor listing of an operating business (subject to all applicable regulatory approvals).
11. Advertisements for Expressions of Interest appeared in the Australian Financial Review on 11 September 2012 and 12 September 2012. Interested parties were required to complete a Confidentiality Agreement, and then received an Information Memorandum.
12. Additional information about the history of MTD and the MTD Group is included in Annexures 9 – 13 of this Report and elsewhere in this Report.

## **2.2 Statutory information**

The records of the Australian Securities and Investments Commission ("ASIC") correctly indicate the current and former directors of MTD.

## **2.3 Books and Records**

MTD Group FY 2011 Annual Report (Annexure 9) has been audited, and include an audit report.

The MTD Group Appendix 4D – Half Year Report for the 6 months ended 31 December 2011, Results Announcement to the Market (Annexure 10) and the accompanying Half-year Financial Report of MTD and MTD Group includes a review, (which is not an audit) by the firm that audits MTD.

The audit for FY 2012 has not been completed.

Proper books and records of the Company appear to have been maintained to enable the audit referred to in Annexure 9, and the Review referred to in Annexure 10, to have been conducted.

The audit for FY 2012 was not completed prior to my appointment on 31 August 2012. MTD Group Appendix 4E – 30 June 2012 and dated 31 August 2012 (Annexure 11) does not include an audit report or review.

## **2.4 Financial Statements and Historical Financial Performance**

The financial position of MTD at 31 August 2012 including comparative financial information at 30 June 2011, 31 December 2011, 30 June 2012 and 31 August 2012 is at Annexure 13. Financial statements for MTD Group are at Annexures 9 to 11.

## **3 Current Financial Position**

### **3.1 Report as to Affairs**

The Report as to Affairs ("RATA") provides information on the financial position of the company. A summary of the RATA is attached as Annexure 1. A RATA will be received from Mr Frank Shien, director of MTD, in the next day. Other directors have been requested to submit a RATA.

### **3.2 Assets and Liabilities as at 31 August 2012**

Attached as Annexure 2 is a summary of the estimated assets and liabilities of the Company as at 31 August 2012, prepared by the Administrator.

## **4 Deed Proposals**

4.1 Details of two Deed of Company Arrangement (DOCA) proposals appear elsewhere in this report. Creditors will have the opportunity on 5 October 2012 to choose between liquidation of the Company or a Deed of Company Arrangement ("DOCA").

4.2 This Report includes a comparison of the estimated return to creditors in a liquidation scenario versus each of the DOCA proposals, and also, my Opinion in my capacity as Voluntary Administrator.



## 5 INVESTIGATION AND POSSIBLE RECOVERIES BY A LIQUIDATOR

Corporations Regulation 5.3A.02 states:

“The Administrator of a company under administration, in setting out his or her opinions in a statement referred to in paragraph 439(4)(b) of the Corporations Act 2001, must specify whether there are any transactions that appear to the administrator to be voidable transactions in respect of which money, property or other benefits may be recoverable by a liquidator under Part 5.7B of the Corporations Act 2001.”

Part 5.7B of the Corporations Act 2001 deals with recovering property or compensation for the benefit of creditors of insolvent companies. Part 5.7B is only available to a Liquidator, and further, a Liquidator is afforded greater powers of investigation than an Administrator or Deed Administrator. If creditors resolve that the company be wound up, then the powers contained in Part 5.7B operate.

As Administrator I have conducted an investigation into the affairs of the company. The work performed includes the following:

- Reviewed MTD Group FY2011 Financial Report (audited)
- Reviewed MTD Group Appendix 4D “Half year report for the 6 months ended 31 December 2011- Results for Announcement to the Market” dated 29 February 2012.
- Reviewed MTD Group Appendix 4E “Preliminary Report for the year ended 30 June 2012” dated 31 August 2012.
- Reviewed announcements to the ASX.
- Reviewed the movement in assets and liabilities of MTD and also MTD Group from 30 June 2011 to 31 August 2012.
- Reviewed draft management accounts (unaudited) for MTD and also MTD Group as at 31 August 2012
- Reviewed selected books and records of MTD including minute books, general journals, ledgers, cash books, banks statements and other records.
- Conducted searches of ASIC, Personal Property Security Register, ASX, real property.
- Interview with MTD director Mr Frank Shien and enquiry.

The above documents include financial and non-financial narrative on the history of MTD and also MTD Group.

I have reviewed the financial and non financial history of each Controlled Entity and Interest in Associates from 30 June 2011 to 31 August 2012 and comment below.

I have been interested to identify material movements or transactions that attract attention and/or may potentially be recoverable by a liquidator of MTD under Part 5.7B of the Corporations Act 2001, or alternatively, under Chapter 2D (Directors Duties) of the Corporations Act 2001.

Given the size and complexity of MTD and MTD Group, and the relatively short period of time between my appointment and the issuing of this Report, in some instances I have not been able to verify information back to source documentation or perform work beyond a preliminary stage. The limitations of my investigations have not prevented me from being able to form an opinion on what is in the best interests of creditors.

## ANALYSIS OF MOVEMENT IN MTD

The purpose of this section of the Report is to provide information on the financial position of MTD (rather than MTD Group) at various milestones - 30 June 2011, 31 December 2011, 30 June 2012 and 31 August 2012. Attached is an analysis (Annexure 13) in support of the above provided to me by MTD. The analysis is not prepared by me. I have reviewed the analysis and also made enquiry of MTD Director, Mr Shien. Explanations have been provided in connection with movements and balances.

I include in the next section of this Report commentary in respect of the movement in assets and liabilities in Controlled Entities and also Associates from 30 June 2011 to 31 August 2012.

## ANALYSIS OF MOVEMENT IN CONTROLLED ENTITIES AND ALSO INTEREST IN ASSOCIATES

The purpose of this section of the report is to compare and contrast Controlled Entities, and also, Interest in Associates at 30 June 2011 and also, at 31 August 2012. The source of information for 30 June 2011 is Note 24 and Note 25 MTD Group FY 2011 Financial Statements (Annexure 9). The source of information for 31 August 2012 is the ASX lodgement on 31 August 2012 (Annexure 11) and information supplied by MTD Director, Mr Shien. I make observations below based on information supplied.

	<i>Company Name</i>	<i>ACN</i>	<b>30.6.2011 % Equity Interest</b>	<b>30.6.2012 % Equity Interest</b>
<b><i>Controlled Entities</i></b>				
<i>Current as at 31 August 2012</i>				
1	Metroland Funds Management Limited	134 682 876	100%	100%
2	Metroland Management Services Pty Limited	135 051 035	100%	100%
3	Global Real Estate Assets Corporation Pty Limited	118 983 403	100%	100%
<i>De-registered as at 31 August 2012</i>				
4	Home at Metro Pty Ltd	122 580 161	100%	deregistered
5	Campbelltown Metro Pty Limited	120 262 928	100%	deregistered
6	DK Metro Engineering Pty Limited	131 554 428	100%	deregistered
7	Gaintak Note Company Pty Limited	122 515 931	100%	deregistered
8	Goldwest Metro Pty Limited	109 151 251	100%	deregistered
9	Metro Facilities Management Pty Limited	119 107 461	100%	deregistered
10	MetroBuild Associates Pty Limited	117 203 835	100%	deregistered
11	Metroland Constructions Pty Limited	122 229 243	100%	deregistered
12	Metroland Homes Pty Ltd	092 281 135	100%	deregistered
13	Metroland Investments Pty Limited	094 547 878	100%	deregistered
14	Metroland Properties Pty Limited	086 462 044	100%	deregistered
15	Canterbury Metro Pty Ltd (formerly Kings Properties (Australia) Pty Limited)	087 386 981	100%	deregistered
16	Greenway Australia Properties Pty Limited *	087 622 811	25.05%	0%
17	Gaintak Investment Pty Ltd *	105 831 356	25.05%	0%

*Former (Interest sold 31 August 2012)*

18	Stratawide Management Pty Limited	102 395 022	55%	0%
	<i>Interest in Associates</i>			
	<i>Former</i>			
19	Ausbao (NSW) Management Pty Ltd		49%	0%
	Metro Plaza Chinatown JV		20%	0%

Milestone events for MTD and MTD Group include the following:

May 2007	Acquired Wentworthville Mall Shopping Centre.
June 2007	Acquired Campbelltown Shopping Centre.
August 2011	Disposed of interest in Quay Street Chinatown Development.
March 2012	Exit Greenway Plaza and Greenway SupaCentre development.
July 2012	Exchanged Contracts of Sale for part of Campbelltown Shopping Centre site.
August 2012	Sold 55% interest of MTD in Stratawide.
August 2012	Exchanged Contracts of Sale for remainder of Campbelltown Shopping Centre site.
Calendar Year 2012	Discussions re new funding particularly from China and Hong Kong.

**1. METROLAND FUNDS MANAGEMENT LIMITED  
ACN 134 682 876**

AFS License Number:	339360
ABN:	66 134 682 876
Board of Directors:	Frank Shien Xavier Chen
Responsible Managers:	Scott Morgan Michael Este Xavier Chen
Key Person:	Scott Morgan
Compliance Officer / General Counsel:	Xavier Chen

Metroland Funds Management Limited ("**MFM**") was incorporated to hold an Australian Financial Services License (AFS number: 339360) which permits it to source investments and operate wholesale and retail managed investment schemes to finance the property development and investment activities of MTD Group. MFM was also incorporated with a view to developing a property funds portfolio that would invest in third party property developments and investments, other than or in addition to those originated by MTD's property development business.

In September 2010, two managed investment schemes, Metroland Australia Trust and Metroland Property Trust No. 1, were registered, but due to lack of investment activity, these schemes were deregistered in December 2011. MFM has not had other investment activity.

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## **Structure and Corporate Background**

### 1. Incorporation

Metroland Development Fund Pty Ltd ("**MDF**") was incorporated on 18 December 2008 with MTD as the sole holder of 2 ordinary shares (\$1 each).

### 2. Change of Name

On 26 May 2009, MDF changed its name to Metroland Funds Management Pty Limited.

### 3. Grant of AFS License (wholesale)

Metroland Funds Management Pty Limited was granted an AFS license (wholesale) on 8 September 2009.

### 4. Conversion to Public Company

On 19 February 2010, Metroland Funds Management Pty Limited converted to a public (but not listed) company and thereby changed its name to Metroland Funds Management Limited ("**MFM**").

### 5. Variation of License

MFM was granted a variation of its AFS license to cover retail products on 21 September 2010.

### 6. Registration of Schemes and Establishment of Compliance Committee

The Metroland Australia Trust ("**MAT**") and Metroland Property Trust No. 1 ("**MPT1**") were registered as Managed Investment Schemes on 22 September 2010.

In accordance with sections 601JA(1) and (3) of the Corporations Act 2001, the Compliance Committee in respect of each Scheme was established on 29 September 2010 by (i) the appointment of Perry Hume and Hao-Vou Yin as external compliance committee members (Xavier Chen is the internal compliance committee member) and (ii) the signing of the Compliance Committee Charter.

### 7. Deregistration of Schemes and Cessation of Compliance Committee

MAT and MPT1 were deregistered on 25 December 2011.

## **Balance Sheet and Profit and Loss Position**

Refer to comments below on the financial position as at 31 August 2012 of MFM.

## **Financial Performance – Past, present and future**

MFM has had no activity since its incorporation and has not obtained any fees from any activity, notwithstanding that it has complied with its legal and financial obligations imposed under the Corporations Act 2001 and by ASIC.

## **Options to realise license and/or assets**

MFM has no assets of commercial value other than its AFS license and the \$50,000 bank deposit (referred to below) which it is required to hold at all times as a condition of its license.

One of the current obligations imposed on the holder of an AFS license such as MFM is the requirement to hold a minimum of \$50,000 in its own bank account.

I am advised by MFM director, Mr Xavier Chen that there has been a significant number of companies holding AFS licenses (particularly the smaller ones) seeking to sell or cancel their license of late. Consequently, the realisable value of companies with an AFS license that are for sale has decreased according to Mr Chen, and it is his view, supported by Mr Shien, that the sale of MFM or its license will not result in a realisation greater than \$50,000 including the bank deposit.

I am not aware of any issues to report to creditors of MTD in respect of MFM. MFM is not in External Administration. It is wholly owned by MTD. In an effort to obtain value for the shell of MTD, MFM has remained a dormant entity since my appointment as Administrator of MTD on 31 August 2012 to preserve the value of MFM as a corporate entity with an AFS license. MFM remains under the control of its directors. The directors have liaised with me, in my capacity as Administrator of MTD.

## **2. METROLAND MANAGEMENT SERVICES PTY LIMITED ACN 135 051 035**

The Company was incorporated on 22 January 2009, for the purpose of providing property management services to investment properties within the MTD Group and Investments in Associates. It was involved in the provision of property management services to the Wentworthville Mall and Greenway SupaCenta. Subsequent to the sale of Wentworthville Mall and the interest in Greenway SupaCenta entities, it ceased providing property management services. At 31 August 2012 there was only one employee in the Company, who provides legal services to the SupaCenta entities in relation to tenancy leases.

I am not aware of any issues to report to creditors of MTD. I do not consider the investment of MTD in the Company to have any commercial value to MTD.

## **3. GLOBAL REAL ESTATE ASSETS CORPORATION PTY LIMITED ACN 118 983 403**

Global Real Estate Assets Corporation Pty Limited ("**Global**") was incorporated on 27 March 2006. Global acts as the trustee for the Global Real Estate Assets Trust ("**the Global Trust**"). The Global Trust was constituted on 1 April 2006 as a unit trust, with MTD as the sole unitholder in the Global Trust.

In June 2007, the Wentworthville Mall property was transferred to the Global Trust from Goldwest Metro Pty Limited (as indicated elsewhere in this report). The Wentworthville Mall property had been purchased by Goldwest Metro Pty Limited in 2005.

In May 2007, the Global Trust acquired the Campbelltown Square Shopping Centre property.

Both the above acquisitions were funded by loan finance from Colonial First State ("**CFS**").

The Wentworthville Mall property was sold and settled in September 2011, with the liability to CFS being discharged. The Wentworthville Mall property was sold together with a four year rental guarantee, provided to the purchaser, Austino Wentworthville Pty Limited ACN 146 623 421 ("**Austino**"). Prior to my appointment as administrator of MTD, Austino had commenced Proceedings against Global and also joined MTD in the Proceedings. The Proceedings against MTD have been stayed arising from my appointment as Administrator of MTD. The status as at the date my appointment at 31 August 2012 was that MTD and Global had disputed the claim of Austino. As Administrator, I have not formed a view about the Proceedings or the claim against MTD. I have requested and received certain documentation and obtained advice in my capacity as administrator of MTD and I reserve my opinion. Austino have submitted a proof of debt

against MTD as at 31 August 2012. Austino claim in their proof of debt "\$353,312.08 plus additional and Continuing Liabilities as set out in the Statement of Claim" against MTD. The Continuing Liabilities are not quantified.

As at 31 August 2012, the assets of Global as trustee of the Global Trust comprise the property known as Campbelltown Square Shopping Centre and located at 218-240 Queen Street, Campbelltown NSW 2560. As at 31 August 2012, the liabilities of Global as trustee of the Global Trust comprise a (disputed) liability to Austino arising from the rent guarantee as indicated above, and also, a liability to Perpetual Nominees Limited as Custodian for CFS Wholesale Pooled Mortgage Fund ("CFS") as mortgagee over the Campbelltown Square Shopping Centre property. Sale contracts, which are conditional on a subdivision (in progress), and other matters have been exchanged for the sale of the Campbelltown Square Shopping Centre prior to 31 August 2012. The proceeds of sale will not satisfy, in full, the estimated claim of \$10.4m to CFS. CFS hold a guarantee from MTD for the amount owing by Global to CFS. The shortfall to CFS is estimated at \$1.4m assuming the contracts of sale settle. Global has no other assets of commercial value, other than the Campbelltown Square property.

I am advised by Mr Shien that he expects that the contracts to sell the property will settle subject to Global attending to conditions precedent in the contracts of sale.

At the date of this report, Global Real Estate Assets Corporation Pty Limited is not under External Administration. CFS are in dialogue with the directors of Global Real Estate Assets Corporation Pty Limited (rather than me as Administrator of MTD). CFS reserve their rights. CFS served Notice of Demand for Payment by MTD of \$10,403,866 on 10 September 2012. The notice of demand discloses that CFS reserves the right to make further or other demands in relation to any amounts falling due for payment from time to time.

I am not aware of any issues to report to the creditors of MTD in relation to Global, other than comments herein, and in other places, in this report.

I do not consider the investment of MTD in Global Real Estate Assets Corporation Pty Limited to have any commercial value.

#### **4. HOME AT METRO PTY LIMITED ACN 122 580 161**

The Company was incorporated on 8 November 2006 with MTD holding a 60% interest. The business of the Company comprised import of products sourced from China. The business activities of the Company ceased in 2008. The Company was deregistered on 14 December 2011. I am not aware of any issues to report to the creditors of MTD.

#### **5. CAMPBELLTOWN METRO PTY LIMITED ACN 120 262 928**

The Company was incorporated on 10 July 2006. It was incorporated with the intention of it holding the property Campbelltown Square Shopping Centre property. However, the Company was not used. The Company has not conducted any operations and was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

#### **6. DK METRO ENGINEERING PTY LIMITED ACN 131 554 428**

The Company was incorporated on 11 June 2008. The Company was involved in the provision of engineering services to construction projects. During the years 2009 – 2010 the Company was involved in the sourcing of steel products and related engineering services for a limited number of small-medium sized projects. The Company's operations ceased during FY2011 and

the Company was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**7. GAIN TAK NOTE COMPANY PTY LIMITED**  
**ACN 122 515 931**

The Company has not engaged in any business or other activities since incorporation. I am not aware of any issues to report to creditors of MTD.

**8. GOLDWEST METRO PTY LIMITED**  
**ACN 109 151 251**

The Company was incorporated on 19 May 2004. In 2005, the Company acquired the Wentworthville Mall Shopping Centre property in Wentworthville. The property was transferred to Global as trustee for the Global Trust on 29 June 2007. The Company was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**9. METRO FACILITIES MANAGEMENT PTY LIMITED**  
**ACN 119 107 461**

The Company was incorporated on 4 April 2006 with MTD holding 51%. The Company provided management and maintenance services to commercial properties. Operations ceased in 2008, and the minority interest in the Company was transferred to MTD. No other business operations were conducted by the Company. The Company was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**10. METROBUILD ASSOCIATES PTY LIMITED**  
**ACN 117 203 835**

The Company was incorporated on 18 November 2005. It operated in the import and distribution of residential property fittings. Business operations of the Company ceased during 2010, and the Company was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**11. METROLAND CONSTRUCTIONS PTY LIMITED**  
**ACN 122 229 243**

The Company was incorporated on 17 October 2006 with an initial holding by MTD of 60%. The Company's operations were in property construction management. The Company was involved with the construction management of Greenway SupaCenta development in Wetherill Park during 2007-2009, a related entity development; and in the refurbishment of 45 Murray Street, Pyrmont in 2008-2009, also for a related entity. No other developments were undertaken by the Company. The interests held by the minority shareholders were transferred to MTD on 8 October 2010. The Company's construction management activities ceased following the completion of 45 Murray Street Pyrmont with only minor projects undertaken subsequently in relation to the Greenway SupaCenta development in Wetherill Park. All business operations of the Company ceased during 2011 and the Company was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**12. METROLAND HOMES PTY LIMITED**  
**ACN 092 281 135**

The Company was incorporated on 7 April 2000. In 2002, the Company acquired property in Gladesville NSW. The Gladesville property was sold in 2006. The Company then remained dormant until it was deregistered during FY 2012. I am not aware of any issues to report to the creditors of MTD.

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**13. METROLAND INVESTMENTS PTY LIMITED**  
**ACN 094 547 878**

The Company was incorporated on 22 September 2000. The Company was involved, as a 50% joint venture partner, in the development of a golf-course oriented housing complex in Cattai NSW in 2004. In March 2005, the Company sold out of the development in its early stages. Following exit from this development project, the Company did not engage in any other activity. The other 50% of the Company was transferred to MTD in May 2009 and the Company remained dormant, and was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**14. METROLAND PROPERTIES PTY LIMITED**  
**ACN 086 462 044**

The Company acquired the Bay Plaza Shopping Centre in Neutral Bay NSW in 2003. The property was sold during 2006. The Company was dormant subsequent to the sale of the property. The Company was deregistered during FY 2012. I am not aware of any issues to report to creditors of MTD.

**15. CANTERBURY METRO PTY LIMITED (FORMERLY KINGS PROPERTIES (AUSTRALIA) PTY LIMITED)**  
**ACN 087 386 981**

The Company changed its name from Kings Properties (Australia) Pty Limited to Canterbury Metro Pty Ltd on 10 June 2011. It was named Canterbury Metro Pty Ltd at the time of deregistration during FY 2012. The Company was incorporated 3 May 1999. It purchased commercial property in Five Dock NSW, which was sold. In 2005 a property was acquired in Ultimo NSW, refurbished and sold in 2008. Subsequent to 2008, no other operations were conducted by the Company. I am not aware of any issues to report to creditors of MTD.

**16. GREENWAY AUSTRALIA PROPERTIES PTY LIMITED**  
**ACN 087 622 811**

The Company was incorporated on 17 May 1999 as Crossingham Pty Limited. It changed its name to Greenway Australia Properties Pty Limited on 16 February 2004. In 2004, it acquired commercial property in Wetherill Park.

In 2007, the Company entered into a 50% joint venture for the development of the Greenway SupaCenta in Wetherill Park, by contributing the property to form part of the development. Contemporaneously, MTD also disposed of 50% of its interest in Greenway Australia Properties Pty Limited; and also transferred the remaining 50% to Global as trustee for the Global Trust. In 2011, the interest of Global in Greenway Australia Properties Pty Limited was diluted to 25.05% following the issue of shares to a new investor. In March 2012 Global disposed of its remaining 25.05%. At 30 June 2012, Global did not hold any interest in Greenway Australia Properties Pty Limited.

This commentary should be read in conjunction with the commentary on Gaintak Investment Pty Ltd and also, Greenway SupaCenta Joint Ventures.

I am not aware of any issues to report to creditors of MTD in connection with Greenway Australia Properties Pty Limited Greenway, SupaCenta Joint Ventures or Gaintak Investment Pty Limited.



## **GREENWAY SUPACENTA JOINT VENTURES**

### **History of the SupaCenta Joint Venture Joint Venture Parties**

Greenway Australia Properties Pty Limited was incorporated in May 1999 as a wholly-owned subsidiary of MTD. It acquired a commercial property at Wetherill Park NSW in 2004.

Gaintak Investment Pty Ltd was incorporated on 7 August 2003 with MTD holding a 50% interest. Gaintak Investment Pty Ltd acts as a trustee for the Gaintak Investment Unit Trust ("the Gaintak Trust") which was constituted on 10 August 2003, with MTD holding a 50% interest. The Gaintak Trust acquired the shopping complex known as Greenway Plaza in December 2003. The Gaintak Trust also purchased an adjoining property in April 2005.

### **Commencement of the Joint Venture**

A joint venture operation was commenced in 2007 to begin the development of the Greenway SupaCenta bulky goods centre, with Greenway Australia Properties Pty Ltd and Gaintak Investment Pty Ltd each being 50% partners in the joint venture.

In December 2007, MTD transferred 50% of its interest in Greenway Australia Properties Pty Ltd to Global.

Following this, the Greenway SupaCenta Joint Venture Operation was ultimately held equally between MTD and the other interest-holders of the 2 joint venturers.

In September 2008, MTD transferred its 50% interest in Gaintak Investment Pty Ltd and the Gaintak Trust to Global as trustee for the Global Trust.

In November 2008, MTD sold its remaining 50% interest in Greenway Australia Properties Pty Limited to the same 50% stakeholders of Gaintak Investment Pty Ltd.

### **Operation of the Joint Venture**

The development of the SupaCenta was completed in July 2009. The Joint Venture operations included rental income from the two commercial properties: Greenway Plaza held in Gaintak Investment Unit Trust; and from Greenway SupaCenta which was held equally between Greenway Australia Properties Pty Ltd and the Gaintak Trust.

Both properties were financed by Suncorp Metway; for the purchase of Greenway Plaza and the construction of the SupaCenta.

In FY2011, the Suncorp Metway loans became due for payment, and with the significant fall in market value of the secured properties, the loan was not able to be re-financed by Suncorp Metway. In April 2011, finance was secured from an independent party enabling the Suncorp Metway loan facility to be repaid at a \$A10m discount. In addition, the new financier provided a further subordinated loan injection into the joint venture in return for the acquisition of a 49.9% interest in the two joint venture parties: Greenway Australia Properties Pty Ltd and Gaintak Investment Pty Ltd. As a result, the interests of the two original shareholders and unitholders were diluted down to 25.05% each. Accordingly, the interest of Global in the joint venture was diluted from a 50% interest to 25.05% interest.

On 30 March 2012, MTD as a result of the continuing devaluation of the commercial properties in the Joint Venture, which affected the book value of the subordinated joint venture loans it had made to the Joint Venture, and the need to repay the borrowings becoming due, entered into a transaction to assign the right to the debts owing to it by the Joint Venture entities, and sale of its 25.05% interest in the Joint Venture, to a third party at a consideration equivalent to the net book value of the debts, and net asset value of the Joint Venture. The consideration was satisfied by

the third party assuming the liabilities of MTD of an amount equal to the net book value of the debts owing and net asset value of the Joint Venture.

Following these transactions, MTD had no further interest in the Joint Venture.

This commentary should be read in conjunction with the commentary on Gaintak Investment Pty Ltd and also, Greenway Australia Properties Pty Limited.

I am not aware of any issues to report to creditors of MTD.

#### **17. GAIN TAK INVESTMENT PTY LIMITED ACN 105 831 356**

The commentary on Gaintak Investment Pty Limited is embedded in the commentary on Greenway Australia Pty Limited and also Greenway SupaCenta Joint Ventures elsewhere in this report. I am not aware of any issues to report to creditors of MTD.

#### **18. STRATAWIDE MANAGEMENT PTY LIMITED ACN 102 395 022**

The Company was incorporated on 3 October 2002. On 1 November 2002, MTD transferred 45% interest in the Company to Mr Anthony Maroon, and MTD retained a 55% interest. The Company provided strata management services to various residential and commercial properties. Mr Maroon runs the business with three other staff. During August 2012, MTD entered into a contract to sell its 55% shareholding in the Company to Mr Maroon for \$770,000, valuing the business in total at \$1,400,000. MTD received the consideration of \$770,000 during August 2012. An independent valuation of Stratawide was obtained to determine the fair market value of the assets of the business. The independent valuer determined that the value of the whole business at the time of sale was \$1,367,776. Accordingly, receipt of \$770,000 by MTD for its 55% investment appears fair and reasonable, in my opinion, based on the independent valuation. I am not aware of any issues to report to creditors of MTD in respect of the sale of MTD's investment.

#### **19. AUSBAO (NSW) MANAGEMENT PTY LIMITED AND METRO PLAZA CHINATOWN JV**

MTD held a 49% interest in the Company. The Company was established to manage the construction of a development in Quay Street Chinatown NSW. MTD, through a Related Entity, held a 25% interest in the development proposal. Prior to the commencement of any development, the investment was sold to a third party investor during August 2011, and MTD transferred its shares to Ausbao Pty Ltd. I am not aware of any issues to report to creditors of MTD.

I detail below the results of my investigation, including but not limited to

- Breaches (including directors' duties)
- Insolvent trading (s.588G);
- unfair preferences (s.588FA);
- uncommercial transactions (s.588FB);
- unfair loans (s.588FD); and
- any other breaches I detect.

A broad outline of these issues and a summary of my investigation to date are outlined below.

## 5.1 Breaches (including directors' duties)

Chapter 2D of the Corporations Act 2001 provisions include, inter alia:

- s180 – duty to exercise powers with care and diligence
- s181 – duty to exercise powers in good faith and for a proper purpose
- s182 – officer not to use position to improperly gain advantage
- s183 – officer not to use information for improper purposes
- s184 – criminal liability for reckless or intentionally dishonest behaviour

A liquidator can bring proceedings against current and former officers for losses incurred as a result of breaches of the above duties (if any).

Loans were made by MTD to Controlled Entities and also Associates. If that occurred in circumstances where the Controlled Entity and/or Associate had no capacity to repay the monies, it may give rise to issues as to whether there are breaches of directors' duties.

Payments were made to certain creditors during August 2012 out of the proceeds of the Stratawide proceeds as indicated in the section of this report relating to s.588FA of the Act.

I have considered whether there was any breach of section 180 (care and diligence). A director owes a duty to the corporation to take into account the interest of creditors. However, there is a business judgment defence to section 180 in sub-section (2).

That defence comprises:

- (a) that the judgment was made in good faith for a proper purpose
- (b) there was no material personal interest in the subject matter of the judgment
- (c) the directors informed themselves about the subject matter of the judgment to the extent they reasonably believed to be appropriate
- (d) they rationally believed the judgment was in the best interests of the corporation.

The subsequent sections to section 180 involve similar considerations. Section 182 refers to directors not improperly using their position to, inter alia, cause detriment to the corporation. Section 1318 can allow for Court exoneration of breaches of the sections.

It is put to me by Mr Shien that, if proceedings (ss 180-184) were commenced against directors and former directors:

- (a) Each director and former director denies any breach or contravention of the Act;
- (b) If, somehow, any directors or former directors are somehow liable (which is denied), each director and former director will submit that they have acted honestly and having regard to all the circumstances ought to be excused of any liability pursuant to the Act;
- (c) Such proceedings would be commercially unsuccessful or at best, have an uncertain outcome, and in any event require substantial funds for professional costs to appoint a Liquidator and then to fund examinations and proceedings.

I note that the Directors and Officers insurance policy for directors of MTD lapsed on 30 June 2011.

For the purposes of this report, it is my view that there will be no recoveries or funds available to unsecured creditors pursuant to ss 180-184 of the Act from the company's current or former directors assuming that the company enters into liquidation rather than a deed of company arrangement.

However, if a Liquidator is appointed, a Liquidator could conduct additional investigation and/or public examinations followed by proceedings. Examinations, and then, proceedings (if any) would need to be funded. There is no certainty that examinations and/or proceedings would result in judgment or funds for creditors. Creditors have not offered to fund examinations to date. Preparation and conduct of examinations, and then, consideration of the outcomes are estimated at around \$50,000 for professional costs. Proceedings, if any, would need to be separately estimated and funded.

Mr Shien has declined my invitation to supply a statement of his personal assets and liabilities. A similar invitation has been provided to other directors, with no response. Mr Shien has however indicated that he owns no assets beneficially. My search of real property interests of directors and certain former directors of MTD causes me to conclude that some or all directors and former directors may have assets but it is unclear whether they are held beneficially, and the net worth of any of those properties, after obligations to mortgagees.

It may be that individual creditors have separate causes of action against officers of MTD. They could consult their legal advisors on this.

## 5.2 Insolvent Trading

The Corporations Act 2001 provides in Section 588G that directors have a duty to prevent a company incurring liabilities where they know or ought to know that the company is insolvent. The directors can be liable to compensate the company (Section 588M) for losses resulting from insolvent trading, subject to defences available. In addition, a holding company (or Parent Company) may be similarly responsible for the debts incurred by an insolvent subsidiary (Section 588V).

Other than in cases of fraud, the directors of a company may only be sued for insolvent trading if a company is in liquidation. Where a Voluntary Administrator has been appointed, assessment of the issues of insolvent trading can be important to creditors if they are being asked to choose between a deed of company arrangement or liquidation. In that instance, creditors have to assess the advantages to them of a deed (which does not include proceeds from insolvent trading action) compared to the likely return to them in a liquidation (which could include the proceeds of insolvent trading action). Liquidation preserves the possibility of individual creditors taking action in their own right.

### Corporations Act 2001 (Cth) (the "Act")

1. Section 588G of the Act relevantly provides:

- (1) *This section applies if:*
  - (a) *a person is a director of a company at the time when the company incurs a debt; and*
  - (b) *the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and*
  - (c) *at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and*
  - (d) *that time is at or after the commencement of this Act.*
  
- (2) *By failing to prevent the company from incurring the debt, the person contravenes this section if:*
  - (a) *the person is aware at that time that there are such grounds for so suspecting; or*
  - (b) *a reasonable person in a like position in a company in the company's circumstances would be so aware.*

- (3) *A person commits an offence if:*
  - (a) *a company incurs a debt at a particular time; and*
  - (aa) *at that time, a person is a director of the company; and*
  - (b) *the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and*
  - (c) *the person suspected at the time when the company incurred the debt that the company was insolvent or would become insolvent as a result of incurring that debt or other debts (as in paragraph (1)(b)); and*
  - (d) *the person's failure to prevent the company incurring the debt was dishonest.*
  
- (3A) *For the purposes of an offence based on subsection (3), absolute liability applies to paragraph (3)(a).*
  
- (3B) *For the purposes of an offence based on subsection (3), strict liability applies to paragraphs (3)(aa) and (b)."*

2. Section 588H of the Act relevantly provides the following defences to a contravention of section 588G of the Act:

- "(1) *This section has effect for the purposes of proceedings for a contravention of subsection 588G(2) in relation to the incurring of a debt (including proceedings under section 588M in relation to the incurring of the debt).*
  
- (2) *It is a defence if it is proved that, at the time when the debt was incurred, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.*
  
- (3) *Without limiting the generality of subsection (2), it is a defence if it is proved that, at the time when the debt was incurred, the person:*
  - (a) *had reasonable grounds to believe, and did believe:*
    - (i) *that a competent and reliable person (the **other person**) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and*
    - (ii) *that the other person was fulfilling that responsibility; and*
  - (b) *expected, on the basis of information provided to the first-mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time."*

3. Section 588V of the Act relevantly provides as follows:

- "(1) *A corporation contravenes this section if:*
  - (a) *the corporation is the holding company of a company at the time when the company incurs a debt; and*
  - (b) *the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and*
  - (c) *at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and*
  - (d) *one or both of the following subparagraphs applies:*

- (i) *the corporation, or one or more of its directors, is or are aware at that time that there are such grounds for so suspecting;*
- (ii) *having regard to the nature and extent of the corporation's control over the company's affairs and to any other relevant circumstances, it is reasonable to expect that:*
  - (A) *a holding company in the corporation's circumstances would be so aware; or*
  - (B) *one or more of such a holding company's directors would be so aware; and*
- (e) *that time is at or after the commencement of this Act."*

4. Section 588X of the Act relevantly provides the following defences to a contravention of section 588V of the Act:

*"(1) This section has effect for the purposes of proceedings under section 588W.*

*(2) It is a defence if it is proved that, at the time when the debt was incurred, the corporation, and each relevant director (if any), had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.*

*(3) Without limiting the generality of subsection (2), it is a defence if it is proved that, at the time when the debt was incurred, the corporation, and each relevant director (if any):*

*(a) had reasonable grounds to believe, and did believe:*

*(i) that a competent and reliable person was responsible for providing to the corporation adequate information about whether the company was solvent; and*

*(ii) that the person was fulfilling that responsibility; and*

*(b) expected, on the basis of the information provided to the corporation by the person, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.*

*(4) If it is proved that, because of illness or for some other good reason, a particular relevant director did not take part in the management of the corporation at the time when the company incurred the debt, the fact that the director was aware as mentioned in subparagraph 588V(1)(d)(i) is to be disregarded.*

*(5) It is a defence if it is proved that the corporation took all reasonable steps to prevent the company from incurring the debt.*

*(6) In subsections (2), (3) and (4):*

***relevant director** means a director of the corporation who was aware as mentioned in subparagraph 588V(1)(d)(i)."*

Comment

I have reviewed the list of the twenty largest shareholders of MTD. None appear to be a Parent Entity of MTD for the purposes of s588V. Sections 588V and 588X are therefore not applicable. However, if any subsidiaries of MTD entered into liquidation, the Liquidator of such entity could claim against MTD.

I have considered the insolvent trading provisions in conducting my review of MTD. Determining the earliest date of insolvency in this matter for the purposes of s.588G is unlikely to be resolved unless public examinations are held, followed by proceedings. It is premature to know, if proceedings are commenced, whether directors will substantiate a defence, and also, whether directors have capacity to satisfy judgement, if judgment were obtained. I comment about capacity to pay at paragraph 5.1 above.

As indicated earlier in this Report, the FY2011 financial statements, and the financial statements at 31 December 2011 and 30 June 2012 contain disclosure about Going Concern (rather than insolvency). It is my view that MTD was insolvent at 31 August 2012.

At my request, I have received a submission from one director of MTD, Mr Shien, via his lawyers, Brown Wright Stein.

The following is an extract of the words supplied by Mr Shien's lawyers, in connection with s588G.

**Start of extract.**

*"We (Brown Wright Stein, Lawyers for Mr Shien) understand, as is usual, that the Administrator intends to make comment in his report to creditors in relation to possible insolvent trading by the Company and the liability of directors of the Company ("Directors") for that trading. We are instructed that any action commenced on the premise of a claim of insolvent trading will be vigorously defended by the Directors. In order to give a balanced view of issues that we anticipate will be raised in the second report to creditors, we have set out below our reasons for asserting that the Directors have not engaged in insolvent trading in breach of the Act which we encourage the Administrator to include in his report.*

**Position of the Directors**

1. *Section 588G of the Act is designed to prevent a director of a company from allowing the company to continue to incur debts when the company is insolvent and likely to be unable to pay the debts that it incurs, as and when they fall due.*
2. *We are instructed, and the accounts of the Company appear to indicate, that the Company would have been able, at all material times, to pay its debts as and when they fell due.*
3. *No demands were made by unsecured creditors prior to the appointment of the Administrator in relation to the repayment of debts that would have been enforced to the extent that there would have been an event of insolvency in relation to the Company.*
4. *The liability of the Company to the major creditor of the Company, Colonial First State ("CFS"), was created in 2007 when the Company entered into a deed of guarantee ("Guarantee") to secure a debt owing to a related company, Global Real Estate Assets Corporation Pty Limited ("Global").*
5. *The debt to CFS was owed by Global and not by the Company.*
6. *At the time that the Company entered into the Guarantee, the value of the properties owned by the Company ("Properties") was sufficient that Global would have been able to repay all monies secured by the Guarantee to CFS in the event that CFS had made a call on the Guarantee.*
7. *As such, at the time the Company entered into the Guarantee, we are instructed that the Company and each Director had reasonable grounds to expect, and did expect, that the Company was solvent and would remain solvent even if the Company was required to repay the debt of Global to CFS.*
8. *The Company entered into the Guarantee in 2007 and CFS only demanded repayment of the debt owed by Global and made a call on the Guarantee once the Administrator had been appointed in respect of the Company (that is, in 2012). The length of time that elapsed between the Company entering into the Guarantee and CFS seeking to enforce the Guarantee supports the position in the preceding two paragraphs.*
9. *It was only when contracts for the sale of the Properties exchanged (which occurred just prior to the appointment of the Administrator), that the diminished value of the Properties was crystallised.*
10. *For the reasons set out in paragraphs 1 to 9 above:*

- (a) *the Company was not insolvent at the time of entering into the Guarantee with CFS ("Relevant Time");*
  - (b) *at the time that the Company entered into the Guarantee, there were not reasonable grounds for suspecting that the Company was insolvent or would become insolvent as a result of the Guarantee being enforced by CFS;*
  - (c) *the Company incurred no relevant debt for the purposes of section 588G of the Act;*
  - (d) *each Director denies that the Company engaged in any insolvent trading; and*
  - (e) *each Director denies that they have in any way contravened section 588G of the Act.*
11. *If, somehow, all of the criteria of Section 588G are satisfied (which is denied by the Directors), the position of each Director is that, at the time the Company entered into the Guarantee with CFS, each Director had reasonable grounds to expect, and did expect, that the Company was solvent and would remain solvent even if the Company was required to repay the Global debt to CFS. Each Director repeats that given that the liability to CFS was incurred in 2007 and CFS has only recently made a call on moneys owing to it under the Guarantee, there is clear evidence which supports this position.*
12. *Further, if any Directors are somehow liable (which is denied by the Directors), we are instructed that each Director submits that they have acted honestly and having regard to all of the circumstances ought to be excused of any liability pursuant to sections 1317S or 1318 of the Act.*

*Based on the information set out above, it is our view that there will be no recoveries or funds available to unsecured creditors from insolvent trading proceedings from the Directors assuming that the Company enters into liquidation rather than a deed of company arrangement. The Administrator would be wasting his time and the money of creditors if he was to bring any such action."*

**End of extract.**

In my capacity as Administrator, I **conclude** as follows in connection with insolvent trading.

For the purposes of this report, it is my view that there will be no recoveries or funds available to unsecured creditors pursuant to s588G of the Act from the company's current or former directors assuming that the company enters into liquidation rather than a deed of company arrangement.

However, if a Liquidator is appointed, a Liquidator could conduct additional investigation and/or public examinations followed by proceedings. Examinations, and then, proceedings (if any) would need to be funded. There is no certainty that examinations and/or proceedings would result in judgment or funds for creditors. Creditors have not offered to fund examinations to date. Preparation and conduct of examinations, and then, consideration of the outcomes are estimated at around \$50,000 for professional costs. Proceedings, if any, would need to be separately estimated and funded.

I comment about capacity to pay at paragraph 5.1 above.

### **5.3 Unfair Preference Payments (s.588FA)**

A transaction is an unfair preference if it results in a creditor receiving from the company, in respect of an unsecured debt, more than the creditor would receive from the company if the transaction were set aside and the creditor were to prove for the debt in the winding up of the company. If the payment(s) to the creditor was made within the six months preceding the



appointment of the Administrator, a Liquidator can take action to seek to recover funds from an alleged preferred creditor and subject to defences available, and success in proceedings, distribute any proceeds according to the order of priority contained in Section 556 of the Corporations Act 2001. The Liquidator must establish that at the date of each payment that the company was insolvent (s588FC of the Act). As can be seen from the comments by Mr Shien's lawyers at paragraph 5.2, a claim by a liquidator is likely to be disputed.

#### Comment

I have considered s588FA in conducting my review of MTD.

The balance of the proceeds of sale of MTDs investment in Stratawide Management Pty Ltd of \$677,000 was received during August 2012. Some of the payments out of those monies, may be preferences under s588FA. It is premature to know if proceedings are commenced by a liquidator, whether the party will be successful in their defence of any proceedings, and whether, if judgment is obtained, the parties have capacity to pay. I have not located any direct evidence that the payments were preferences, however it is appropriate for me to disclose my observations. Some of the parties are overseas.

On 22 August 2012, \$670,000 was received from Anthony Maroon as the "balance of consideration for sale of Stratawide". The total consideration was \$770,000 with a deposit of \$100,000 having been received on 28 June 2012.

Following receipt of the \$100,000, the monies appear to have been disbursed in the ordinary course of business.

Out of the \$670,000, payments included: Premier Realty Pty Ltd - \$70,000 (rent); Global Real Estate Asset Corporation Pty Ltd - \$70,000 (loan); Tony Rungkat \$100,000 (reduction in loan); and Star Group Corporation Limited - \$200,000 (reduction in amount owing).

Star Group Corporation Limited ("**Star Group**") of Hong Kong received \$A200,000 being for consulting fees at \$A100,000 per month to introduce investors from Hong Kong and China to MTD during calendar year 2012. Star Group was paid \$A200,000 (above) and there remains owing to Star Group as at 31 August 2012 \$A200,000.

Tony Rungkat received \$A100,000 (above) in reduction of a loan.

Monies paid to Premier Realty were for rent of the premises at Level 4, 45 Murray Street Pyrmont. The landlord of the premises is NX Holdings Pty Ltd. Mr Shien is a director of that Company.

The ability of any of the above parties to repay the monies if proceedings are brought and judgment is obtained is unknown. The ability to obtain judgment against any of those parties, or others, is unknown.

For the purposes of this Report, I have concluded and also assumed that there will be no recoveries or funds available to unsecured creditors from unfair preference proceedings.

However, if a Liquidator is appointed, a Liquidator could conduct additional investigation and/or public examinations followed by proceedings. Examinations, and then, proceedings (if any) would need to be funded. There is no certainty that examinations and/or proceedings would result in judgment or funds for creditors. Creditors have not offered to fund examinations to date. Preparation and conduct of examinations, and then, consideration of the outcomes would need to be funded.

#### **5.4 Uncommercial Transactions (s.588FB)**

Section 588FB(1) provides that a transaction of a company is an uncommercial transaction if a reasonable person in the company's circumstances would not have entered into the transaction having regard to certain factors. These factors are: the benefits (if any) and the detriment to the company as a result of entering into the transaction; the respective benefits to other parties to the transaction; and any other relevant matter. An uncommercial transaction may be avoided by a

Liquidator if it was undertaken during the 2 years preceding the appointment of the Administrator.

#### Comment

I have considered s588FB in conducting my review of MTD.

I was supplied with a copy of an independent valuation of MTD's former investment in Stratawide Management Pty Ltd. The consideration received by MTD appears fair and reasonable.

I have made enquiry in relation to the disposal of other assets by Controlled Entities and also Associates of MTD from 30 June 2011 to 31 August 2012.

I have not identified uncommercial transactions that appear commercial for a liquidator to pursue based on available information.

For the purposes of this report, I have concluded and also assumed that there will be no recoveries or funds available to unsecured creditors from s588FB proceedings.

However, if a Liquidator is appointed, a Liquidator could conduct additional investigation and/or public examinations followed by proceedings. Examinations, and then, proceedings (if any) would need to be funded. There is no certainty that examinations and/or proceedings would result in judgment or funds for creditors. Creditors have not offered to fund examinations to date. Preparation and conduct of examinations, and then, consideration of the outcomes would need to be funded.

I am not aware of other issues.

### **5.5 Unfair Loans (s.588FD)**

Unfair loans to a company can be avoided by a Liquidator. A loan to a company is unfair if the interest on the loan or the charges in relation to the loan were extortionate when the loan was made or have since become extortionate because of a variation in its terms.

#### Comment

I have considered s588FD in conducting my review of MTD.

Whether or not there have been unfair loans will not be resolved without examinations and thereafter proceedings. I comment elsewhere about commercial prospects; if judgment were obtained.

For the purposes of this report, I have concluded and also assumed that there will be no recoveries or funds available to unsecured creditors from s588FD proceedings.

However, if a Liquidator is appointed, a Liquidator could conduct additional investigation and/or public examinations followed by proceedings. Examinations, and then, proceedings (if any) would need to be funded. There is no certainty that examinations and/or proceedings would result in judgment or funds for creditors. Creditors have not offered to fund examinations to date. Preparation and conduct of examinations, and then, consideration of the outcomes would need to be funded.

I am not aware of any issues.

### **5.6 Conclusion on Investigation**

At the start of Section 5 of this Report, I indicate work performed to comply with the Administrator's obligations under the Act to investigate MTD's business, property, affairs and financial circumstances.

Given the size and complexity of MTD and MTD Group, and the relatively short period of time between my appointment and the issuing of this report, in some instances I have not been able to verify information back to source documentation or perform work beyond a preliminary stage. The limitations of my investigations have not prevented me from being able to form an opinion on what is in the best interests of creditors.



If creditors resolve at the meeting of creditors that the Company goes into liquidation, the liquidator will further investigate the company's affairs, and perhaps conduct examinations if funding is available. Creditors can, in their own capacity (subject to the liquidator's approval or the approval of the Court) commence their own proceedings for insolvent trading if a liquidator determines that it is not economic to pursue that matter, or is unfunded for that purpose (s 588S). A liquidator is also obliged to submit a report to the ASIC in terms of s533 of the Act.

If the Company enters into liquidation rather than a Deed of Company Arrangement, a liquidator is empowered to conduct further investigation and commence examinations and/or proceedings where rights exist and action is commercial.

Creditors can contact me with any comment, issues or discussion concerning this section of my Report.

## 6 Deed of Company Arrangement

### Deed of Company Arrangement

On the offers received for the purposes of a DOCA, I comment as follows.

It was envisaged that MTD may have value as a listed shell, potentially suitable for a backdoor listing of an operating business, subject to all applicable regulatory approvals.

Advertisements for Expressions of Interest appeared in the Australian Financial Review on 11 September 2012 and 12 September 2012. Interested parties were required to complete a Confidentiality Agreement, and then, receive an Information Memorandum.

Thirty five parties responded to the advertisements. Seven parties signed a Confidentiality Agreement and received an Information Memorandum.

The Information Memorandum required indicative offers to be received by 19 September 2012 with a request that indicative offers specify in as much detail a possible, the structure of the proposed transaction; the amount payable and the recipient's source of funds and ability to pay; the identities of the party putting forward the proposal and its shareholders and directors; any conditions to implementation of the proposal; any third party approvals required to implement the proposal; the time required to implement the proposal and relevant milestones; the further information, if any, that the recipient requires in order to finalise the proposal; and also, the recipient's advisers in respect of the proposal.

I received three offers in writing. I provide an overview of the three offers; and I name them "Offer 1", "Offer 2" and "Offer 3".

Below is an analysis of the three offers received. I regard Offer 2 as being a Deed of Company Arrangement proposal. I regard Offer 3 as being a Deed of Company Arrangement proposal. Creditors will have opportunity to consider Offer 2, and then, Offer 3 at the creditors' meeting on 5 October 2012.

#### Offer 1

The first offer was effectively an offer to acquire shares only in the Company. It does not contain a proposal to pay money to creditors. I discard this offer for the purposes of this report. I contacted the offeror on 21 September 2012 and spoke about their offer. I communicated my view. Also, I indicated that some of the conditions precedent to their offer were not preferred.

#### Offer 2

The second offer is for the payment of \$200,000 ("**Agreed Sum**") on a non-refundable basis if creditors approve the DOCA proposal, including a Creditors' Trust, supplied by Offeror 2. The terms of the proposal are detailed in Annexure 8 to this Report. In essence, upon receipt of the Agreed Sum, the voluntary administrator's fees and expenses and his fees and expenses as administrator of the DOCA will be paid from the cash remaining at bank and the contribution sum. Thereafter, a Creditors' Trust Deed will be executed. The monies remaining will be remitted to a separate account to be held by me as a Trustee of a Creditors' Trust, on behalf of all creditors, who then become beneficiaries under the Trust Deed, save for certain Deferred Creditors specified in the proposal. Employee claims will be paid in full. Thereafter, the claims of creditors/beneficiaries will be assessed as if in a corporate insolvency. Admitted beneficiaries claims will receive their rateable proportion of the balance sum held by me, after payment of trustee fees and expenses in accordance with the rates from time to time charged by Levi Consulting. The DOCA will be effectuated upon entry into the Trust Deed and, control of the Company will be returned to its directors. The Company may be re-listed on the ASX, although

this is not assured. The disclosure in connection with ASIC Regulatory Guide 82 relating to Offer 2 is in this section of the Report (below), as is the administrator's analysis of the position obtaining to the Creditors' Trust proposed. I recommend this proposal (Offer 2) to creditors. It provides certainty, relative simplicity and likely prompt payments to creditors.

### **Offer 3**

Offer 3 in essence proposes that there be a \$50,000 non-refundable deposit paid to the administrator of a DOCA, and that there be an allotment of fresh shares to the proposer or (its associates) at a price of 0.1 cent to a limit of \$500,000 and 500 million shares. I have had discussion with the proposer which also proposes that the Company enter into a creditors trust upon completion of various conditions precedent, including shareholder approval for the issuance of the new shares. There would be a payment of a further \$450,000 for creditors (\$20,000 would also be remitted for administrator expenses) subject to fulfilment of conditions precedent. Thereafter the Company would be debt-free and be able to be returned for listing at the ASX if the ASX agrees. I have no reason to doubt the proposer's ability to pay the offered sums.

I do not recommend this proposal (Offer 3) for at least the following reasons:

- (i) It will require, in accordance with the Company's constitution, ASX Listing Rules, and the Corporations Act, that shareholders resolve to approve the proposed share issue. The managing director of MTD has indicated to me that he is familiar with the majority of MTD's shareholders, and considers they are unlikely to approve the proposed share allotment resolution.
- (ii) The Corporations Act requires provision of significant information to shareholders before a meeting for the purposes of a share allotment, which, in effect, is a take-over by the acquirer and its associates. This information includes expert reports and a detailed memorandum. The costs of this will be significant. Whilst the ASIC can grant relief from some or all of the statutory requirements, there are no assurances that relief would be granted and considerable costs could be spent on a futile application to ASIC for relief. There are also significant costs in circularising shareholders with the notices of meeting and copying and posting voluminous accompanying documents.
- (iii) The Company is also obliged to hold its annual general meeting unless the ASIC grants relief, which, again, cannot be assured. For the annual general meeting, audited accounts need to be put before the meeting. At this time the auditor has not commenced preparation of his audit for the year ending 30 June 2012. Considerable cost would need to be expended on audit fees, as well as costs incurred on the convening of an annual general meeting. In addition, part of the business for the AGM would include the re-election of compulsory retired directors under the Company's constitution, which also involves preparation of memoranda to shareholders at further expense.
- (iv) There would also be continually accruing fees, both of the administrator of the DOCA and his legal representatives, and other expenses such as, potentially, renewal of ASX listing fees.
- (v) The potential acquirer has indicated if it succeeded in procuring the shareholder resolutions it would continue the Company's business as a property developer. There are no assurances that the ASX will agree to the renewed quotation of the Company's shares on ASX, or what conditions ASX might impose for renewed quotation.

- (vi) There would be significant time lag before any payment, which cannot be assured as the conditions precedent may not be met.
- (vii) There would be significant costs of at least, I estimate, \$150,000 to \$200,000 incurred before I would be able make any payments to creditors, (with no assurances that will occur). I am presently without funds to undertake the requirements for the shareholder resolution and maintain the Company's other statutory obligations. The offeror has indicated that it is willing to bear much of the costs involved in its proposal by appointing its own experts/professionals to undertake tasks. Nevertheless, there is a strong likelihood that significant further fees and expenses will be incurred by the administrator.
- (viii) I also accept the assertions of the managing director of MTD that the shareholders are unlikely to vote for the proposed resolution, because of his strong familiarity with the shareholder base.

The offeror has subsequently indicated that it "would be prepared to examine an amended proposal under which 140,000,000 shares were issued at 0.357 cents per share". I do not consider this a definite proposal at this time.

The offeror has also indicated that an alternative path may be available under section 444GA Corporations Act which allows the administrator of a DOCA to transfer shares in a company if he obtains the written consent of the owner of the shares or the leave of the Court. The Court may only give leave if it is satisfied the transfer would not unfairly prejudice the interests of members of the Company. I am not convinced the Court would grant leave in this case, nor do I believe it is likely that adequate written consents of owners of shares could be procured to a transfer of shares to give control to the offeror.

## **Offer 2 – Proposed Resolution for DOCA**

Offeror 2 has provided a summary of the proposed terms for a DOCA. A copy is provided at Annexure 8 of this Report. The creditors' trust proposed by Offeror 2 has been drafted but not finalised as at the date of this Report. A copy will be available at the creditors' meeting on 5 October 2012. If any creditors would like a copy prior to the creditors' meeting, they should let me know.

## **Offer 2 – Disclosure Pursuant to ASIC Guide on Creditors' Trusts as Contained in ASIC Regulatory Guide 82 and tailored for Offer 2**

### **6.1 Reasons (Offer 2)**

The Deed Proposal for Offer 2 involves a Creditors' Trust because it is the mechanism by which the ASX re-listing requirements **may** be satisfied, and consequently, the Company's shares can be re-listed on the ASX. The re-listing of the Company's shares on the ASX is contingent upon compliance with ASX Listing Rules, and Chapter 1 of the ASX Listing Rules particularly would be satisfied only if the Company were solvent. The Deed Proposal in Offer 2 envisages the solvency of the Company: the execution of a Creditors' Trust discharges the Company from its pre-administration debts and therefore accelerates the Company's exit from External Administration, because the Company would then be debt-free.

There is a sound commercial reason to adopt the Deed Proposal in Offer 2 involving a Creditors' Trust because the Creditors' Trust stipulates the availability of funds of

\$200,000 for distribution to creditors, as opposed to the outcome in a winding up where it is expected that there would be \$nil return to creditors (unless there are recoveries from insolvent trading proceedings or breaches of directors' duties). It appears to be in the best interests of creditors to adopt the Deed Proposal in Offer 2 involving a Creditors' Trust in these circumstances where there is value in the corporate shell of a listed company in voluntary administration. The re-listing of shares on the ASX has a potential value to creditors and also shareholders which otherwise is not available in a liquidation.

## 6.2 Key events (Offer 2)

Should creditors resolve to accept the Deed Proposal in Offer 2 and execute a DOCA at the second creditors' meeting, the key events and the implication of each event for creditors are as follows:

- The DOCA must be executed within 15 business days from the date of the second creditors' meeting, or within 15 business days from any adjournment of the second creditors' meeting. Upon execution of the DOCA, the Administrator will become the Deed Administrator.
- A Deed Fund comprising the funds in the Company's administration bank account and the sum of \$200,000 must be paid to the Administrator on or before the execution of the DOCA by the Deed Administrator. The sum of \$200,000 is the contribution from a corporation to be paid on a non-refundable basis subject to creditors approving the Deed Proposal of Offer 2 in this Report.
- The Deed Fund will be partially distributed ("**Partial Distributions**") in the following order of priority:
  - a) Firstly, in payment of the Administrator's expenses;
  - b) Secondly, in payment of the Administrator/Deed Administrator's expenses; and
  - c) Finally, in payment of the Administrator/Deed Administrator's remuneration.
- After the Partial Distributions from the Deed Fund have been made, the balance will be known as the "**DOCA Trust Contribution**". Until the DOCA Trust Contribution is assigned to the Trust (see below), all monies paid under the DOCA will be held by the Deed Administrator for the benefit of the Administrator, Deed Administrator and Participating Creditors.
- Within 15 business days from the date of the second creditors' meeting (or adjourned second creditors' meeting), or otherwise on the same day as the DOCA is entered into, the Company must execute the Metroland Creditors' Trust Deed ("**the Trust Deed**").
- The Deed Administrator will be the Trustee under the Trust Deed.
- The Company will authorise the Trustee to enter into the Trust Deed. The Trust Deed must be entered into before the DOCA is effectuated.
- Immediately prior to the effectuation of the DOCA, the Company must assign, convey and set over to the Trust the amount of the DOCA Trust Contribution.
- Upon effectuation of the DOCA, all creditors' claims which have arisen up to and including 31 August 2012 are extinguished (except the claims of Deferred Creditors who are the related parties named in paragraph 22 of the Deed Proposal) and such claims will be replaced with a right to claim against the Trust pursuant to the terms of the Trust Deed.
- The Trust Fund will be applied in order of priority as follows:

- a) Firstly, the Trustee's disbursements plus GST;
  - b) Secondly, the remuneration of the Trustee plus GST;
  - c) Thirdly, in payment of Priority Creditors and subrogating employee creditors, if any; and
  - d) Finally, the balance to be distributed pro-rata to admitted participating ordinary unsecured, partly secured and contingent creditors (except the Deferred Creditors and Priority Creditors).
- Participating creditors (except the Deferred Creditors) are to accept their entitlements under the Trust Deed in full settlement of their claims.
  - The claims of Deferred Creditors will be extinguished on termination of the Trust.
  - The Trust Deed will terminate once the Trust Fund is distributed in accordance with the terms of the Trust Deed and upon payment of all taxation payable on interest accrued on the Trust Fund.

### **6.3 Return to creditors (Offer 2)**

The value of the total Trust Fund is anticipated to be \$200,000 plus the balance of cash which the Administrator has in the administration bank account, less the Partial Distributions referred to in paragraph 6.2 above.

After the expenses and remuneration of the Administrator, Deed Administrator and Trustee, it is expected that the residual amount available to creditors pursuant to Offer 2 will be in the vicinity of \$100,000.

### **6.4 Trustee particulars (Offer 2)**

Under the terms of the DOCA proposal, David Levi is to be the Trustee of the proposed Trust Deed. The ASIC will continue to have certain powers over the conduct of the Trustee as David Levi is a registered liquidator.

The proposed Trustee does not have any potential conflict of interest in carrying the role as trustee. The proposed Trustee has civil liability insurance (including professional indemnity insurance) that will cover his conduct in his capacity as Trustee of the Metroland Creditors' Trust Deed.

### **6.5 Remuneration and expenses (Offer 2)**

The Deed Administrator and the Trustee will be remunerated at the rates issued from time to time by Levi Consulting Pty Ltd, as set out in the schedule "Explanation of hourly rates" included in Annexure 7 of this Report.

The Trustee is entitled to be reimbursed for all expenses incurred by him in the administration of the Trust Deed. The Trustee's disbursements are to be paid from the Trust Fund first pursuant to the order of priority stipulated by the Trust Deed.

### **6.6 Indemnities (Offer 2)**

The Trustee shall be indemnified by the Company and from the Trust Fund against any liability arising from his administration of the Trust Deed, other than such liability as may be attributable to any negligence, default, breach of duty, or breach of trust on his part.



### 6.7 Powers (Offer 2)

The powers of the Deed Administrator are governed by the Corporations Act 2001 (Cth) and the powers of the Trustee under the proposed Creditors' Trust Deed are governed by the Trustee Act 1925 (NSW) ("**the Trustee Act**").

### 6.8 Claims (Offer 2)

The claims against the Company will be dealt with in accordance with the terms of the proposed DOCA set out at Annexure 8 of this Report. The value of the claims will be determined under the Trust Deed by the creditors lodging a proof of debt with the Trustee, as if he was the Deed Administrator of the DOCA. The Trustee will have full access to all Company records necessary to determine claims.

### 6.9 GEERS (Offer 2)

The Administrator anticipates that any eligible employee creditors will not participate in the GEERS Scheme as their claims will be satisfied in full from the distribution of the Trust Fund.

Should the Department of Education, Employment and Workplace Relations ("**DEEWR**") under the GEERS Scheme or any other party ("**Subrogating Employee Creditors**") pay any employee entitlements in respect of which employees would otherwise be entitled to priority under s556 of the Corporations Act, then such Subrogating Employee Creditors will be entitled to participate in the Trust Deed in lieu of relevant employees in respect of any monies so paid.

### 6.10 Other creditor/beneficiary differences (Offer 2)

The terms of the Trust Deed indicate that the creditors/beneficiaries will have protections and rights similar to those available to creditors of a company subject to a DOCA under the Corporations Act.

In relation to formal proof of claims, the Trust Deed incorporates the proof of debt provisions in Division 6, Part 5.6 of the Corporations Act and also the Corporations Regulations 5.6.39 to 5.6.57. In this respect, the protections and rights of creditors will remain unchanged.

To some extent, the position of creditors/beneficiaries is enhanced because the Trustee's fiduciary duties to a beneficiary are arguably higher than the duties of a Deed Administrator to a creditor.

In circumstances where there is claimed prejudice arising from the Trustee's ruling on a beneficiary's claim, pursuant to the Trust Deed as if Corporations Regulation 5.6.54 applied to the claim, a beneficiary will be entitled to apply to the Court for a determination of the Trustee's ruling. In addition, where issues arise in connection with the Trustee's adjudication of claims, the Trustee can apply for judicial advice pursuant to s63(1) of the Trustee Act. Judicial advice is more useful and advantageous to creditors, compared to mere directions by a court to a Deed Administrator, in the sense that it conveys the court's opinion on how the Trust Deed must be interpreted, and consequently, how the Trustee can discharge his fiduciary duties to creditors/beneficiaries of the Trust. Any beneficiary who claims to be prejudiced by the advice can apply to the Court pursuant to s63(10) of the Trustee Act.

#### **6.11 Compliance opinion (Offer 2)**

The corporation has deposited the Agreed Sum of \$200,000 into the Trust Account of the lawyers acting for the Administrator on 25 September 2012.

#### **6.12 Solvency statement (Offer 2)**

On the basis of the successful completion of the proposed capital raising, it is the Administrator's opinion that the Company will be solvent at the date of effectuation of the DOCA, if the DOCA is wholly effectuated on the terms proposed.

#### **6.13 Tax implications for Company and Trust (Offer 2)**

The Company must pay nominal stamp duty on the Trust Deed immediately after execution of the Trust Deed and prior to execution of the DOCA.

The Trust must pay tax on the interest accrued on the Trust Fund.

#### **6.14 Tax implications for Creditors/Beneficiaries (Offer 2)**

It is not anticipated that there will be any unusual tax implications for creditors/beneficiaries arising from receiving a distribution from the Trust Fund. It is recommended that creditors seek professional advice about their individual tax position.

### **Offer 3 – Proposed Resolution for DOCA**

Offeror 3 has provided an initial expression of interest dated 17 September 2012 and an amended expression of interest dated 24 September 2012 (as detailed below). The proposed terms substitute as a summary of the proposed terms for a DOCA.

The proposed terms of Offer 3 are as follows:

1. The purchaser of Metroland will be special purpose entity referred to as "NBL".
2. NBL will pay \$500,000 for the benefit of the other creditors of Metroland.
3. 140,000,000 new shares will be issued to NBL (or its nominee) at 0.357 cents per share to a limit of \$500,000.
4. The AFSL remains with the re-structured Metroland and any required approval is obtained.
5. Existing employees are terminated.
6. One existing director to remain and NBL appoints a Chair and two further directors.
7. All company records to be dealt with by mutual agreement and office to be headquartered in Brisbane.
8. NBL deposits \$50,000 (non-refundable) upon execution of documentation.
9. A period of 7 days due diligence is required effective from the date of acceptance by creditors.

10. NBL contributes \$20,000 towards the Administrator's costs of the DOCA.
11. Documentation to the satisfaction of NBL's lawyers.

The creditors' trust proposed by Offeror 3 has not been drafted as at the date of this Report.

### **Offer 3 – Disclosure Pursuant to ASIC Guide on Creditors' Trusts as Contained in ASIC Regulatory Guide 82 and tailored for Offer 3**

#### **6.1 Reasons (Offer 3)**

The Deed Proposal for Offer 3 involves a Creditors' Trust because it is the mechanism by which the ASX re-listing requirements **may** be satisfied, and consequently, the Company's shares can be re-listed on the ASX. The re-listing of the Company's shares on the ASX is contingent upon compliance with ASX Listing Rules, and Chapter 1 of the ASX Listing Rules particularly would be satisfied only if the Company were solvent. The Deed Proposal in Offer 3 envisages the solvency of the Company: the execution of a Creditors' Trust discharges the Company from its pre-administration debts and therefore accelerates the Company's exit from External Administration, because the Company would then be debt-free.

There are benefits in adopting a Deed Proposal involving a Creditors' Trust. A Deed Proposal followed by a Creditors' Trust will result in a distribution to creditors, as opposed to the outcome in a winding up where it is expected that there will be \$nil return to creditors (unless there are recoveries from insolvent trading proceedings and breaches of directors' duties, if any). I have indicated elsewhere in Section 6 of this Report the reasons why I favour Offer 2 rather than Offer 3. The re-listing of shell has a potential value to creditors and also shareholder which otherwise is not available in a liquidation.

#### **6.2 Key events (Offer 3)**

Should creditors resolve to accept the Deed Proposal in Offer 3 and execute a DOCA at the second creditors' meeting, the key events and the implication of each event for creditors are as follows:

- The DOCA must be executed within 15 business days from the date of the second creditors' meeting, or within 15 business days from any adjournment of the second creditors' meeting. Upon execution of the DOCA, the Administrator will become the Deed Administrator.
- A Deed Fund comprising the funds in the Company's administration bank account and the sum of \$50,000 must be paid to the Administrator on or before the execution of the DOCA by the Deed Administrator. The sum of \$50,000 is the contribution from a corporation to be paid on a non-refundable basis subject to creditors approving the Deed Proposal of Offer 3 in this Report.
- The balance of \$450,000 will not be received until all conditions precedents have been fulfilled to the satisfaction of Offeror 3.
- Subject to receipt of the \$450,000 contribution referred to above, and subject to the Company having entered into a DOCA, the Company must then execute the Metroland Creditors' Trust Deed.
- The Deed Fund will be partially distributed ("**Partial Distributions**") in the following order of priority:

- a) Firstly, in payment of the Administrator's expenses;
  - b) Secondly, in payment of the Administrator/Deed Administrator's expenses; and
  - c) Finally, in payment of the Administrator/Deed Administrator's remuneration.
- After the Partial Distributions from the Deed Fund have been made, the balance will be known as the "**DOCA Trust Contribution**". Until the DOCA Trust Contribution is assigned to the Trust (see below), all monies paid under the DOCA will be held by the Deed Administrator for the benefit of the Administrator, Deed Administrator and Participating Creditors.
  - The Deed Administrator will be the Trustee under the Trust Deed.
  - The Company will authorise the Trustee to enter into the Trust Deed. The Trust Deed must be entered into before the DOCA is effectuated.
  - Immediately prior to the effectuation of the DOCA, the Company must assign, convey and set over to the Trust the amount of the DOCA Trust Contribution.
  - Upon effectuation of the DOCA, all creditors' claims which have arisen up to and including 31 August 2012 are extinguished and such claims will be replaced with a right to claim against the Trust pursuant to the terms of the Trust Deed.
  - The Trust Fund will be applied in order of priority as follows:
    - a) Firstly, the Trustee's disbursements plus GST;
    - b) Secondly, the remuneration of the Trustee plus GST;
    - c) Thirdly, in payment of Priority Creditors and subrogating employee creditors, if any; and
    - d) Finally, the balance to be distributed pro-rata to admitted participating ordinary unsecured, partly secured and contingent creditors (except the Deferred Creditors and Priority Creditors).
  - Participating creditors are to accept their entitlements under the Trust Deed in full settlement of their claims.
  - The Trust Deed will terminate once the Trust Fund is distributed in accordance with the terms of the Trust Deed and upon payment of all taxation payable on interest accrued on the Trust Fund.

### 6.3 Return to creditors (Offer 3)

The value of the total Trust Fund is anticipated to be the balance of cash which the Administrator has in the administration bank account, plus \$500,000, less Administrator and Deed Administrator's disbursements and remuneration [including costs associated with compliance with the Company's Constitution, ASX Listing Rules and the Corporations Act; arrangements for shareholders to consider a resolution to approve the proposed share issue; the provision of significant information required by ASX Listing Rules and the Corporations Act from shareholders before a shareholders' meeting for the purpose of a share allotment, expert reports and a detailed memorandum (subject to any relief granted by the ASX and/or ASIC); circularising shareholders with the Notices of Meeting and copying and posting company documents; holding annual general meeting unless ASIC grants relief (which cannot be assured); preparation of audited accounts to be put before annual general meeting including expenses for audit fees as well as costs incurred in convening annual general meeting; re-election of compulsory retired directors under the Company's Constitution which also involves preparation of Memorandum to shareholders at further expense; continually accruing fees both

of the Administrator of the DOCA and his legal representatives, and other expenses, such as renewal of ASX listing fees], less the Partial Distributions referred to in paragraph 6.2 above.

After the expenses and remuneration of the Administrator, Deed Administrator and Trustee, it is expected that the residual amount available to creditors pursuant to Offer 3 will be in the vicinity of \$250,000.

#### **6.4 Trustee particulars (Offer 3)**

Under the terms of the DOCA proposal, David Levi is to be the Trustee of the proposed Trust Deed. The ASIC will continue to have certain powers over the conduct of the Trustee as David Levi is a registered liquidator.

The proposed Trustee does not have any potential conflict of interest in carrying the role as trustee. The proposed Trustee has civil liability insurance (including professional indemnity insurance) that will cover his conduct in his capacity as Trustee of the Metroland Creditors' Trust Deed.

#### **6.5 Remuneration and expenses (Offer 3)**

The Deed Administrator and the Trustee will be remunerated at the rates issued from time to time by Levi Consulting Pty Ltd, as set out in the schedule "Explanation of hourly rates" included in Annexure 7 to this Report.

The Trustee is entitled to be reimbursed for all expenses incurred by him in the administration of the Trust Deed. The Trustee's disbursements are to be paid from the Trust Fund first pursuant to the order of priority stipulated by the Trust Deed.

#### **6.6 Indemnities (Offer 3)**

The Trustee shall be indemnified by the Company and from the Trust Fund against any liability arising from his administration of the Trust Deed, other than such liability as may be attributable to any negligence, default, breach of duty, or breach of trust on his part.

#### **6.7 Powers (Offer 3)**

The powers of the Deed Administrator are governed by the Corporations Act 2001 (Cth) and the powers of the Trustee under the proposed Creditors' Trust Deed are governed by the Trustee Act 1925 (NSW) ("**the Trustee Act**").

#### **6.8 Claims (Offer 3)**

The claims against the Company will be dealt with in accordance with the terms of the proposed DOCA and not dissimilar to similar terms set out at Annexure 8 of this Report. The value of the claims will be determined under the Trust Deed by the creditors lodging a proof of debt with the Trustee, as if he was the Deed Administrator of the DOCA. The Trustee will have full access to all Company records necessary to determine claims.

#### **6.9 GEERS (Offer 3)**

The Administrator anticipates that any eligible employee creditors will not participate in the GEERS Scheme as their claims will be satisfied in full from the distribution of the Trust Fund.

Should the Department of Education, Employment and Workplace Relations (“DEEWR”) under the GEERS Scheme or any other party (“**Subrogating Employee Creditors**”) pay any employee entitlements in respect of which employees would otherwise be entitled to priority under s556 of the Corporations Act, then such Subrogating Employee Creditors will be entitled to participate in the Trust Deed in lieu of relevant employees in respect of any monies so paid.

#### **6.10 Other creditor/beneficiary differences (Offer 3)**

The terms of the Trust Deed indicate that the creditors/beneficiaries will have protections and rights similar to those available to creditors of a company subject to a DOCA under the Corporations Act.

In relation to formal proof of claims, the Trust Deed incorporates the proof of debt provisions in Division 6, Part 5.6 of the Corporations Act and also the Corporations Regulations 5.6.39 to 5.6.57. In this respect, the protections and rights of creditors will remain unchanged.

To some extent, the position of creditors/beneficiaries is enhanced because the Trustee’s fiduciary duties to a beneficiary are arguably higher than the duties of a Deed Administrator to a creditor.

In circumstances where there is claimed prejudice arising from the Trustee’s ruling on a beneficiary’s claim, pursuant to the Trust Deed as if Corporations Regulation 5.6.54 applied to the claim, a beneficiary will be entitled to apply to the Court for a determination of the Trustee’s ruling. In addition, where issues arise in connection with the Trustee’s adjudication of claims, the Trustee can apply for judicial advice pursuant to s63(1) of the Trustee Act. Judicial advice is more useful and advantageous to creditors, compared to mere directions by a court to a Deed Administrator, in the sense that it conveys the court’s opinion on how the Trust Deed must be interpreted, and consequently, how the Trustee can discharge his fiduciary duties to creditors/beneficiaries of the Trust. Any beneficiary who claims to be prejudiced by the advice can apply to the Court pursuant to s63(10) of the Trustee Act.

#### **6.11 Compliance opinion (Offer 3)**

The Administrator has made enquiries with the corporation which will be contributing \$500,000 to the Deed Fund and is satisfied of the ability of the corporation to comply with all obligations under the DOCA proposal and under the proposed Creditors’ Trust. The corporation will be depositing the \$50,000 on a non-recourse basis prior to the execution of the DOCA and a further amount of \$450,000 subject to conditions precedent as set out in Offer 3 and in further documentation to be drafted. In addition, Offeror 3 will provide \$20,000 towards the Deed Administrator’s costs which shall be payable prior to or upon the company entering into a DOCA.

#### **6.12 Solvency statement (Offer 3)**

It is the Administrator’s opinion that the Company will be solvent at the date of effectuation of the DOCA.

#### **6.13 Tax implications for Company and Trust (Offer 3)**

The Company must pay stamp duty on the Trust Deed immediately after execution of the Trust Deed.

The Trust must pay tax on the interest accrued on the Trust Fund.

### 6.14 Tax implications for Creditors/Beneficiaries (Offer 3)

It is not anticipated that there will be any unusual tax implications for creditors/beneficiaries arising from receiving a distribution from the Trust Fund. It is recommended that creditors seek professional advice about their individual tax position.

The Deed Proposal in Offer 2 and Offer 3 will result in a pool of funds available to creditors in relation to their claims, including contingent claims.

The Deed Proposal in Offer 2 and Offer 3 will offer a Deed Fund and a distribution to creditors.

In a liquidation scenario, it is my view that there will be no dividend at all for preferential or unsecured creditors. In a liquidation scenario, the potential for any liquidator's recoveries, as outlined in Section 5, is contingent upon assessing the results of any public examinations, if held. If public examinations were held, they would need to be funded. Following an assessment of the merits, proceedings would need to be commenced, and judgment obtained, and then action to seek to enforce judgment. No funding has been offered by creditors, nor is funding in the amounts indicated in this Report known to be available from creditors or a litigation funder or regulator.

In my opinion, a Deed Proposal will result in certainty and a distribution. No dividend is expected in a liquidation scenario for the reasons indicated.

For the reasons indicated, I favour the Deed Proposal in Offer 2 rather than Offer 3.

## 7 What Creditors May Decide

It is the Administrator's obligation to make recommendation to creditors on which alternative is in the best interest of creditors.

Section 439C of the Corporations Act 2001 states:

*"At a meeting convened under section 439A, the creditors may resolve:*

- a) that the company execute a deed of company arrangement specified in the resolution (even if it differs from the proposed deed (if any) details of which accompanies the notice of meeting); or*
- b) that the administration should end; or*
- c) that the company be wound up."*

## 8 Administrator's Opinion

In terms of Section 439A(4)(b) of the Corporations Act 2001, I advise as follows:

- (i) In regard to the execution of a Deed of Company Arrangement, two Deed Proposals have been received and are attached. The Deed Proposals offer all creditors a better outcome than creditors may receive in a liquidation scenario.
- (ii) In regard to the ending of the administration, my opinion is that it will not be in the creditors' interests for the administration to end (without the appointment of a liquidator). It would only be appropriate to resolve that the administration should end if the company had been returned to solvency prior to the date of the second meeting of

creditors. This has not occurred nor will occur and therefore no purpose would be served by further considering this option.

- (iii) In regard to the company being wound up, my view is that it is appropriate that the Company enter into a Deed of Company Arrangement. A Liquidator has rights to seek recovery for insolvent trading and other actions as outlined in this report. However, for the reasons outlined, the prospects of any recovery by a liquidator are at best low, or zero.

For the reasons indicated, I recommend a DOCA, rather than liquidation. I recommend Deed Proposal (Offer 2) contained in this report in preference to Deed Proposal (Offer 3). Deed Proposal (Offer 3) is not as preferable as Deed Proposal (Offer 2), however, Deed Proposal (Offer 3) appears better than liquidation.

Deed Proposal (Offer 2), and also, Deed Proposal (Offer 3) achieve the object of Part 5.3A of the Corporations Act 2001.

Section 435A states that:

The object of Part 5.3A of the Corporations Act is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

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

The Administrator's primary objective in s435A of the Act is to maximise the chances of the company, while the secondary object is a better return for the company's creditors and members than would result in a liquidation. The use of a Creditors' Trust Deed together with a DOCA combines the two alternative object of Part 5.3A and produces a result that facilitates the Company and its business to continue in existence, thereby providing a better return to the Company's creditors and members than would result in an immediate winding up.

In a liquidation scenario, it is my view that there will be no dividend at all for preferential or unsecured creditors. In a liquidation scenario, the potential for any liquidator's recoveries under Part 5.7B of the Act or Chapter 2D of the Act, is contingent upon assessing the results of any public examinations, if held. If public examinations were held, they would need to be funded. Following an assessment of the merits, proceedings would need to be commenced, and judgment obtained, and then action to seek to enforce judgment. Defendants will be entitled to argue defences. It is uncertain whether or not judgment will be obtained. Significant funding will be required for assessment of the merits, and then proceedings if required. No funding has been offered by creditors, nor is funding in the amounts indicated in this Report known to be available from creditors or a litigation funder.



## 9 Estimated Return to Creditors

If Metroland Australia Limited enters into liquidation, no funds are likely to be available from the company's assets to pay any distribution to creditors.

A Deed Proposal will likely result in a better outcome than liquidation.

Deed Proposal (Offer 2) provides certainty, relative simplicity and likely prompt payments to creditors.

Deed Proposal (Offer 2) is preferred in priority to Deed Proposal (Offer 3). Deed Proposal (Offer 3) contains additional conditions precedent relative to Deed Proposal (Offer 2), and therefore, provides less certainty, some complexity, and reliance on satisfaction of regulatory compliance and shareholder resolution, and is therefore less attractive than Deed Proposal (Offer 2).

Annexure 4 contains three schedules which summarise the financial position for each of the scenarios below.

1. Estimated funds available assuming liquidation. No funds are expected to be available to unsecured creditors in a liquidation scenario.
2. Estimated funds available based on Deed Proposal (Offer 2) set out in Section 6 and Annexure 8 of the Administrator's Report dated 26 September 2012. The estimated dividend available to unsecured creditors is 0.0074338 cents in the dollar (less than 1 cent in the dollar).
3. Estimated funds available based on Deed Proposal (Offer 3) set out in Section 6 of the Administrator's Report dated 26 September 2012. The estimated dividend available to unsecured creditors is 0.0195558 cents in the dollar (about 2 cents in the dollar).

If you have any issues, please contact me.

Yours faithfully



David Levi  
Administrator, Metroland Australia Limited (Administrator Appointed)  
[dlevi@leviconsulting.com.au](mailto:dlevi@leviconsulting.com.au)  
direct telephone 02 9016 4113

**Annexure 1**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
Directors' Report as to Affairs as at 31 August 2012**

A summary of the directors' RATA appears on the following page.

**Annexure 1**
**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
 Director's Report as to Affairs as at 31 August 2012**

Assets	Book Value – Position at 31 August 2012 \$	Est realisable value ERV \$
Interest In Land		-
Debtors		2,000
Cash on Hand		178
Cash at Bank		82,219
Stock		-
Plant & Equipment		500
Assets subject to charges		-
Other – investment in Brisbane		-
Other – investment in Metroland Funds Management Limited		50,000
Other assets		1,260
		<b>136,157</b>
<b>Liabilities, estimated</b>		
Preferential Liabilities	3,291	3,291
Secured Creditor	-	-
Unsecured Liabilities	1,287,567	1,287,567
Contingent assets	-	-
Contingent liabilities	10,420,341	10,420,341

**Notes**

Additional information in connection with the composition of unsecured liabilities is at Annexure 2.

There is a contingent liability to Perpetual Nominees Limited as Custodian for CFS Wholesale Pooled Mortgage Fund ("CFS") for the amount owing by Global Real Estate Assets Corporation Pty Ltd (a wholly MTD subsidiary) to CFS, estimated at \$10,420,341.

At 31 August 2012, Austino Wentworthville Pty Ltd had commenced proceedings against Global and also MTD. MTD has disputed the claim of Austino. The amount of the disputed claim is \$353,312.08 plus additional and Continuing Liabilities as set out in the Statement of Claim. The amount is not included above.

**Annexure 2**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Estimated assets and liabilities, as at 31 August 2012 – estimate prepared by Administrator**

## Annexure 2

### METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149 Estimated assets and liabilities, as at 31 August 2012 – estimate prepared by Administrator

Assets	Notes	Book Value – Position at 31 August 2012 \$	Est realisable value ERV \$
Interest In Land		-	-
Sundry Debtors		-	-
Cash on Hand		-	-
Cash at Bank		82,000	82,000
Stock		-	-
Plant & Equipment		-	-
Assets subject to charges		-	-
Other – investment in Metroland Funds Management Limited		204,116	50,000
			<b>132,000</b>
<hr/>			
<b>Liabilities, estimated</b>			
Preferential Liabilities		4,412	4,412
Secured Creditor		-	-
Unsecured Liabilities		1,344,163	1,344,163
Contingent assets		-	-
Contingent liabilities		10,773,654	10,773,654
		<b>12,122,229</b>	<b>-12,122,129</b>
			- -

#### Notes

There is a contingent liability to Perpetual Nominees Limited as Custodian for CFS Wholesale Pooled Mortgage Fund (“CFS”) for the amount owing by Global Real Estate Assets Corporation Pty Ltd (a wholly MTD subsidiary) to CFS, estimated at \$10,420,341.

At 31 August 2012, Austino Wentworthville Pty Ltd had commenced proceedings against Global and also MTD. MTD has disputed the claim of Austino. The amount of the disputed claim is \$353,312.08 plus additional and Continuing Liabilities as set out in the Statement of Claim. The amount is included above.



**Annexure 3**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Estimated creditors' claims as at 31 August 2012**

**Annexure 3**
**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
 Estimated creditors' claims as at 31 August 2012**

The estimated liabilities to creditors as at 31 August 2012 are as follows:

<b>Company Name</b>	<b>Estimated Amount Owing</b>
<b>Preferential</b>	
Superannuation	3,112.00
<b>Employee entitlements</b>	
Helen Lay	1,309.00
<b>Secured</b>	
-	
<b>Unsecured</b>	
Australian Taxation Office	3,504.00
Achlem Pty Ltd	15,000.00
Bruce Walker	49,400.00
Agy Dassakis t/as City Alliance	33,000.00
DLA Piper Australia	5,151.30
Eakin McCaffery Cox	1,696.64
Gould Ralph Assurance	41,529.65
Gye Associates Lawyers	5,681.50
Hemming & Hart Lawyers	5,981.69
Premier Realty	11,145.80
Scott Morgan	12,500.00
Star Group Corporation Ltd	200,000.00
NX Holdings Pty Ltd	32,450.00
Paul Cheong	400.00
ML Superfund	4,000.00
McNally Management Pty Ltd	77,000.00
Tony Rungkat	321,723.00
Metroland Management Services	370,366.26
Metroland Funds Management	65,567.22
Office of State Revenue	2,562.17
Stratawide Management	61,982.72
XPC Investments	7,000.00
Southland Group	11,000.00
Marsdens Law Group	5,520.90
	<b>1,344,162.85</b>
<b>Contingent</b>	
Austino Wentworthville Pty Ltd	353,312.08
Perpetual Nominees Limited	10,420,341.55

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**Annexure 4****METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
Estimated Outcome, calculated by the Administrator as at 31 August 2012**

There are three schedules attached which represent three available outcomes or scenarios included in Annexure 4.

1. Estimated funds available assuming liquidation. No funds are expected to be available to unsecured creditors in a liquidation scenario.
2. Estimated funds available based on Deed Proposal (Offer 2) set out in Section 6 and Annexure 8 of the Administrator's Report dated 26 September 2012. The estimated dividend available to unsecured creditors is 0.0074338 cents in the dollar (less than 1 cent in the dollar).
3. Estimated funds available based on Deed Proposal (Offer 3) set out in Section 6 of the Administrator's Report dated 26 September 2012. The estimated dividend available to unsecured creditors is 0.0195558 cents in the dollar (less than 2 cents in the dollar).

This Annexure and the attached Schedules are to be read in conjunction with the Report of the Administrator of Metroland Australia Limited (Administrator Appointed) dated 26 September 2012.



**Annexure 4**
**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Estimated Funds available assuming liquidation**  
**Prepared as at 26 September 2012**

		\$
<b>Assets</b>		
Cash at bank as at 31.8.12		82,000
Estimated value, investment in subsidiary - Metroland Funds Management Limited		50,000
		132,000
<b>Less</b>		
Administrator's estimated disbursements including MTD post-appointment salaries to accountant, legal fees during Administration Period (estimated at \$35,000), statutory advertising, searches, insurance	44,000	
Administrator's remuneration (actual, excl GST) - 31.8.12 - 7.9.12	28,409	
Administrator's remuneration (actual, excl GST) - 8.9.12 - 20.9.12	38,117	
Administrator's remuneration (estimated, excl GST) - 21.9.12 to end of Voluntary Administration Period	40,000	
Liquidator's remuneration (estimated, excl GST)	35,000	
	185,526	
<b>Estimated funds available for creditors</b>		<b>nil</b>

**Purpose**

The purpose of this schedule is to estimate the return to creditors in a liquidation scenario. The schedule is to be read in conjunction with the report of Mr David Levi, the Administrator of Metroland Australia Limited (Administrator Appointed) dated 26 September 2012.

**Comments**

In a liquidation scenario, it is my view that there will be no dividend at all for preferential or unsecured creditors. In a liquidation scenario, the potential for any liquidator's recoveries under Part 5.7B of the Act or Chapter 2D of the Act, is contingent upon assessing the results of any public examinations, if held. If public examinations were held, they would need to be funded. Following an assessment of the merits, proceedings would need to be commenced, to seek to enforce judgment. Defendants will be entitled to argue defences. It is uncertain whether or not judgment will be obtained. No funding has been offered by creditors, nor is funding in the amounts indicated in this Report known to be available from creditors or a litigation funder.

**Conclusion**

If Metroland Australia Limited enters into liquidation, on the basis of known information at 26 September 2012, no funds are likely to be available from the Company's assets to pay any distribution to creditors.

**Annexure 4**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Funds available, assuming Deed Proposal involving a Creditors' Trust (Offer 2)**

**Metroland Australia Limited (Administrator Appointed)**  
**Estimated funds available based on Deed Proposal involving Creditors' Trust (Offer 2)**  
**Prepared as at 26 September 2012**

	\$
Cash at bank as at 31.8.12	82,000
Deed Fund contribution - Deed Proposal (Offer 2)	<u>200,000</u>
	282,000
<b>Less</b>	
Administrator's estimated disbursements including MTD post-appointment salaries to accountant, legal fees during Administration Period (estimated at \$35,000), statutory advertising, searches, insurance	44,000
Administrator's remuneration (actual, excl GST) - 31.8.12 - 7.9.12	28,409
Administrator's remuneration (actual, excl GST) - 8.9.12 - 20.9.12	38,117
Administrator's remuneration - 21.9.12 to end of the Voluntary Administration period (estimated, excl GST)	40,000
Deed Administrator's remuneration and disbursements (estimated, excl GST)	20,000
Trustee's remuneration and disbursements including legal, statutory advertising, other pursuant to Creditors' Trust Deed (estimated)	<u>20,000</u>
	190,526
Estimated funds available for creditors	91,474
Less preferential creditor claims	4,500
<b>Estimated funds available for unsecured creditors</b>	<u><u>86,974</u></u>
Total claims of unsecured creditors, as indicated in Annexure 3	1,344,163
Plus contingent unsecured creditors	
Austino Wentworthville Pty Ltd	353,312
Perpetual Nominees Limited as Custodian for Colonial First State Global Asset Management	<u>10,420,342</u>
	10,773,654
<b>Less</b>	
Deferred claims (Non-Participating creditors)	
Premier Realty	11,146
NX Holdings Pty Ltd	32,450
ML Superfund	4,000
Metroland Management Services	<u>370,366</u>
	417,962
<b>Estimated total unsecured creditors entitled to claim against Trust Fund</b>	11,699,855
Dividend to unsecured creditors [\$86,974/\$11,699,855]	0.0074338 c/\$

**Purpose**

The Purpose of this Schedule is to estimate the return to creditors based on Deed Proposal (Offer 2). The Schedule is to be read in conjunction with the Report of Mr David Levi, the Administrator of Metroland Australia Limited (Administrator Appointed) dated 26 September 2012

**Comments**

Full details of the terms of Deed Proposal (Offer 2) are included in Section 6 (including reference to Annexure 8) of the Administrator's Report dated 26 September 2012.

**Conclusion**

The funds to be available to unsecured creditors are estimated above at \$86,974. The total of unsecured creditors' claims are estimated above at \$11,699,855. On the basis of the above estimates, the estimated dividend to unsecured creditors would be .0074338 cents in the dollar (or less than one cent in the dollar). The ultimate amount of the dividend is not a guaranteed amount. While enquiry has been made to reasonably estimate the value of total creditors' claims, the value of total creditor claims may increase or decrease.



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Annexure 4

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Funds available, assuming Deed Proposal involving a Creditors' Trust (Offer 3)**

**Metroland Australia Limited (Administrator Appointed)**  
**Estimated funds available based on Deed Proposal involving Creditors' Trust (Offer 3)**  
**Prepared as at 26 September 2012**

	\$
Cash at bank as at 31.8.12	82,000
Deed Fund contribution - Deed Proposal (Offer 3)	<u>500,000</u>
	582,000
<b>Less</b>	
Administrator's estimated disbursements including MTD post-appointment salaries to accountant, legal fees during Administration Period (estimated at \$35,000), statutory advertising, searches, insurance	44,000
Administrator's remuneration (actual, excl GST) - 31.8.12 - 7.9.12	28,409
Administrator's remuneration (actual, excl GST) - 8.9.12 - 20.9.12	38,117
Administrator's remuneration - 21.9.12 to end of the Voluntary Administration period (estimated, excl GST)	40,000
Deed Administrator's remuneration and disbursements (estimated, excl GST)	20,000
Costs of compliance with statutory requirements for a backdoor listing, estimated at \$150,000 - \$200,000	150,000
Trustee's remuneration and disbursements including legal, statutory advertising, other pursuant to Creditors' Trust Deed (estimated, excl GST)	<u>20,000</u>
	340,526
Estimated funds available for creditors	241,474
Less preferential creditor claims	4,500
<b>Estimated funds available for unsecured creditors</b>	<u><u>236,974</u></u>
Total claims of unsecured creditors, as indicated in Annexure 3	1,344,163
Plus contingent unsecured creditors	
Austino Wentworthville Pty Ltd	353,312
Perpetual Nominees Limited as Custodian for Colonial First State Global Asset Management	<u>10,420,342</u>
	10,773,654
<b>Estimated total unsecured creditors entitled to claim against Trust Fund</b>	<b>12,117,817</b>
Dividend to unsecured creditors [\$236,974/\$12,117,817]	0.0195558 c/\$

**Purpose**

The Purpose of this Schedule is to estimate the return to creditors based on Deed Proposal (Offer 3). The Schedule is to be read in conjunction with the Report of Mr David Levi, the Administrator of Metroland Australia Limited (Administrator Appointed) dated 26 September 2012.

**Comments**

Full details of the terms of Deed Proposal (Offer 3) are included in Section 6 of the Administrator's Report dated 26 September 2012

**Conclusion**

The funds to be available to unsecured creditors are estimated above at \$236,974. The total of unsecured creditors' claims are estimated above at \$12,117,817. On the basis of the above estimates, the estimated dividend to unsecured creditors would be .0195558 cents in the dollar or less than two cents in the dollar. The ultimate amount of the dividend is not a guaranteed amount. While enquiry has been made to reasonably estimate the value of total creditors' claims, the value of total creditor claims may increase or decrease.



**Annexure 5**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Summary of Administrator's receipts and payments**  
**From 31 August 2012 to 26 September 2012**

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**Annexure 5****METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Summary of Administrator's receipts and payments**  
**From 31 August 2012 to 26 September 2012**

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<b>Receipts</b>	<b>Total</b>
Funds transferred from Company's pre-appointment account	81,938.77
Refundable deposits received in expression of interest process	10,000.00
	<hr/> <b>91,938.77</b> <hr/>

  

<b>Payments</b>	<b>Total</b>
Salaries - internal accountant	5,137.50
Refund of deposits received in expression of interest process	4,000.00
	<hr/> <b>9,137.50</b> <hr/>

  

<b>Cash at bank as at 26 September 2012</b>	<b>82,801.27</b>
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**Annexure 6**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Declaration of independence, relevant relationships and indemnities**



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**Annexure 6****METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Declaration of independence, relevant relationships and indemnities**

This document requires the appointee appointed to an insolvent entity to make declarations as to:

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

This declaration is made in respect of myself and my firm, Levi Consulting Pty Ltd.

**A. Independence**

I have undertaken a proper assessment of the risks to my independence and my firm's independence prior to accepting the appointment as Administrator of the Company and/or appointment as Deed Administrator or Liquidator. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that prevented me from accepting this appointment as Administrator and/or appointment as Deed Administrator or Liquidator.

**B. Declaration of Relationships****i. Circumstances of appointment**

On 26 July 2012, I was requested to meet with Mr Frank Shien, a director of the Company. The request was made by Mr Bruce Walker, a Chartered Accountant. I recommended that Mr Shien and the Company obtain advice from a lawyer. I attended a meeting with Brown Wright Stein Lawyers ("BWS"), lawyers acting for the Company.

No advice was provided to Mr Shien or the Company, nor was any fee received.

I subsequently had discussions with BWS and/or Mr Shien and Mr Walker on 30 July, 1 August and 9 August 2012. At those times, I received information about the Company, and also, discussed the appointment of an Administrator in a voluntary administration, and the nature and consequences of an insolvency appointment.

No advice was provided to Mr Shien or the Company, nor was any fee received.

On 29 August 2012 I was requested to attend a meeting at BWS and I was asked whether I would consent to act as Administrator of the Company.

No advice was provided to Mr Shien or the Company, nor was any fee received.

On 31 August 2012 I was appointed Administrator of the Company.

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The above meetings do not affect my independence for the following reasons:

- The Courts and the IPA's Code of Professional Practice specifically recognize the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or is an impediment to accepting the appointment
- The nature of the communications is such that it would not be subject to review and challenged during the course of the liquidation
- The pre-appointment communications will not influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the liquidation of the Company in an objective and impartial manner.

#### **ii. Relevant Relationships**

Neither I, nor my firm, have, or have had, within the preceding 24 months, any relationships with the Company, an associate of the Company or any person or entity that has a charge on the whole or substantially the whole of the Company's property.

#### **iii. Prior Professional Services to the Insolvent**

Neither I, nor my firm have provided any professional services to the Company in the previous 24 months.

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

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

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

I have not been indemnified in relation to this administration, other than any indemnities that I may be entitled to under statute and I have not received any up-front payments in respect of my remuneration or disbursements.

Dated 26 September 2012

David Levi, Levi Consulting Pty Ltd

#### **Note**

1. If circumstances change, or new information is identified, I am required under the Corporations Act and the IPA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.
2. Any relationships, indemnities or upfront payments disclosed in this Declaration must not be such that the Practitioner is no longer independent. The purpose of components B and C of this Declaration is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

**Annexure 7**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
Remuneration**

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## **Annexure 7**

### **METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**

#### **Remuneration**

This document provides information in connection with remuneration. Estimates provided may vary. Amounts stated do not include GST.

#### **History**

On 31 August 2012, the Company entered into Administration and David Levi was appointed Administrator.

On 11 September 2012, the first creditors' meeting was held.

On 26 September 2012, this Report will be sent to creditors by the Administrator including the Administrator's report into the affairs of the Company, his opinion on the future of the company, and notice of the Decision Meeting to be held on 5 October 2012.

#### **Overview of the voluntary administration process**

At the Decision Meeting, creditors may resolve that the Company (i) execute a DOCA; (ii) end the voluntary administration; (iii) enter into liquidation; or (iv) adjourn the Decision Meeting up to 45 business days. The Corporations Act permits an adjournment by resolution of the Decision Meeting to allow time, for example, for negotiations to occur in relation to any proposals put to creditors.

If the Decision Meeting is adjourned, the Administrator will issue a new Notice of meeting to all creditors for the adjourned Decision Meeting.

If creditors resolve that the Company enter into a DOCA, the DOCA must be executed within 15 business days from the date of the second creditors' meeting, or within 15 business days from any adjournment of the second creditors' meeting.

If creditors accept either Deed Proposal (Offer 2) or Deed Proposal (Offer 3), the Company will enter into a DOCA involving a Creditors' Trust Deed.

Details of actual and estimated remuneration are attached in the event that the Company enters into a Deed of Company Arrangement, and also, in the event of liquidation. If the Company enters into a Deed of Company Arrangement, remuneration for the Creditors' Trust will be calculated at the rates issued by Levi Consulting Pty Ltd up to an estimated amount of \$20,000 plus GST.

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## Approval of Remuneration

The Administrator will seek to have remuneration approved at the Decision Meeting. He will consider with creditors having remuneration approved for the following periods:

- The Administration Period
- The liquidation or DOCA period

## Supporting Information

The Administrator provides:

- Details of administrator's actual remuneration for the period from 31 August 2012 to 7 September 2012 (Schedule 1).
- Details of administrator's actual remuneration for the period from 8 September 2012 to 20 September 2012 (Schedule 2).
- An estimate of the administrator's remuneration for the period from 21 September 2012 to end of the Administration Period (Schedule 3).
- An estimate of the liquidator's remuneration (if appointed) in the event that the company enters into liquidation (Schedule 4).
- An estimate of Deed Administrator's remuneration in the event that the company enters into a deed of company arrangement (Schedule 5).

Also included in the analysis is an overview of work performed and likely to be performed.

## Schedules

A summary of the information in the four schedules appears below, based on rates current as at 31 August 2012.

Schedule	Details	Actual - \$	Estimate \$		
Schedule 1	Actual Administrator's remuneration from 31 August 2012 to 7 September 2012	28,409			
Schedule 2	Actual Administrator's remuneration from 8 September 2012 to 20 September 2012	38,117			
Schedule 3	Estimated Administrator's remuneration from 21 September 2012 to end of the Administration Period		40,000		
Schedule 4	Estimated Liquidator's remuneration (if appointed) in the event that the Company enters into liquidation		35,000		
Schedule 5	Estimated Deed Administrator's remuneration, in the event that the Company enters into a Deed of Company Arrangement		20,000		

All amounts exclude GST. The value of time may vary from estimates detailed.

## Remuneration Methods

There are four methods that can be used to calculate remuneration:

1. **Time based.** 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 spent on the tasks performed. Time is calculated in 6 minute intervals.
2. **Fixed fee.** The total fee charged is quoted at the commencement in a fixed amount. 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 asset realisations.
4. **Contingency.** The fee is structured to be contingent on a particular outcome being achieved. A contingency fee may apply in circumstances where significant risk is being taken by the practitioner.

## Method Chosen

Given the nature of this matter, it is proposed that remuneration be calculated on a time basis. This is because it provides a fair reflection of the value of the work performed; the amount charged can be substantiated by ledgers indicating time spent; the different levels of experience, expertise and skills by those performing tasks are recognized; it is difficult to plan for all variables involved with such matter, many of which are outside of the control of the practitioner, to be able to rely on the fixed fee basis and it is not possible to estimate, with certainty, the total fees to complete all tasks. Creditors are able to be assured that fees charged are for work performed – time is recorded and charged in six minute increments.

### Explanation of hourly rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage. Time is calculated in 6 minute units. In some matters, staff may be re-classified to a higher or lower classification arising from academic qualifications and experience.

	\$/Hour	
Appointee	525	Registered Liquidator, Official Liquidator and/or Trustee, bringing specialist skills to insolvency administration
Associate	450	Minimum 10 years experience, at least 5 years at manager level, qualified and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.
Manager 1 (Senior Manager)	400	Minimum 7 years experience, at least 3 years at manager level, tertiary qualified and capable of controlling all aspects of an administration. Experienced at all levels and considered very competent.
Manager 2	375	5- 7 years experience, tertiary qualified with well developed technical and commercial skills and capable of controlling all aspects of an administration. Experienced at all levels and considered competent. Ability to plan and control administration and staff.
Supervisor	325	4 - 6 years experience. Likely tertiary qualified or significant experience. Well developed technical and commercial skills. Ability to assist and co-ordinate planning and control of medium to large administration.
Senior 1	275	2 – 4 years experience. Likely tertiary qualified or nearing completion. Assists planning and control of small to medium sized assignments as well as performing some of the more difficult work on larger administrations.
Senior 2	250	1 – 2 years experience. Likely tertiary qualified or nearing completion Required to assist in day to day fieldwork under supervision of more senior staff.
Intermediate 1	190	0 – 2 years experience. University graduate with little or no professional experience, required to assist in day to day fieldwork under supervision of more senior staff.
Intermediate 2	150	0 - 1 years experience. Plans to undertake degree/diploma. Required to assist in day to day field work under supervision of more senior staff.
Senior Bookkeeper	150	At least 4 years experience in bookkeeping.
Bookkeeper	125	Appropriate bookkeeping skills including computer skills
Secretary	125	Appropriate skills including computer usage and customer service, general administration duties on jobs
Clerk	100	Non-qualified but completed HSC, assist with general administration duties on jobs.
Junior	60	Non-qualified, and with less experience than Clerk.

All amounts exclude GST.

**SCHEDULE 1**
**REMUNERATION (ACTUAL)  
 METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED)  
 For the period 31 August 2012 to 7 September 2012**
**Part 1: Declaration**

Levi Consulting Pty Ltd and I have undertaken a proper assessment of this remuneration claim for my appointment as Administrator of Metroland Australia Limited in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed was in respect of necessary work, properly performed in the conduct of the Administration.

**Part 2: Description of work completed**

Company	Metroland Australia Limited	Period From	31 August 2012	To	7 September 2012
Practitioner	David Levi	Firm	Levi Consulting Pty Limited		
Administration Type	Voluntary Administration (s 436A Corporations Act 2001)				

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
<b>Assets</b> 3.8 hours \$1,755	Asset realisation	Identify assets with commercial value
	Sale of corporate shell	Attend to issues to advance sale of corporate shell including advertisement of sale and discussions in connection with Information Memorandum and Confidentiality Agreement
<b>Creditors</b> 32.5 hours \$12,071	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Dealing with proofs of debt	Receipting and filing POD's
	Meeting of Creditors	Preparation of meeting notices, proxies and advertisements Forward notice of meeting to all known creditors Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting.
<b>Employees</b> 0 hours \$0	Employee issues	No work performed during this period
<b>Trade On</b> 0 hours \$0	Trade On Management	Not applicable in this administration
<b>Investigation</b> 19.6 hours \$9,271	Conducting investigation	Collection of company books and records Review of financial statements Reviewing company's books and records Review and preparation of company nature and history Conducting and summarising statutory searches Review of specific transactions and liaising with directors regarding certain transactions Liaising with directors regarding certain transactions
<b>Dividend</b> 0 hours \$0	Processing proofs of debt	No work performed during this period
<b>Administration</b> 14.4 hours \$5,312	Correspondence	
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists





Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
	Insurance	Identification of potential issues requiring attention of insurance specialists Correspondence with insurer regarding initial and ongoing insurance requirements Reviewing insurance policies Correspondence with previous brokers
	Bank account administration	Preparing correspondence opening and closing accounts Bank account reconciliations
	ASIC forms	Preparing and lodging ASIC forms including 505
	Statutory reporting	Notification of appointment – ASX and ATO
	Planning / Review	Discussions regarding status of administration
<b>Total</b> 70.3 hours \$28,409		

**Part 3: Calculation of remuneration – 31.8.12 to 7.9.12 (inclusive)**

Position	\$/hour (ex GST)	Total estimated hours	Total (\$)	Task Area						
				Assets hrs \$	Creditors hrs \$	Employees hrs \$	Trade on hrs \$	Investigation hrs \$	Dividend hrs \$	Administration hrs \$
Administrator D Levi	525	35.3	\$18,533	2.6hrs \$1,365	12.0hrs \$6,300			14.5hrs \$7,613		6.2hrs \$3,255
Supervisor	325	23.9	\$7,768	1.2hrs \$390	13.9hrs \$4,517			5.1hrs \$1,657		3.7hrs \$1,202
Intermediate 1	190	11.1	\$2,109		6.6hrs \$1,254					4.5hrs \$855
<b>Total</b>		<b>70.3hrs</b>	<b>\$28,409</b>	<b>3.8hrs \$1,755</b>	<b>32.5hrs \$12,071</b>			<b>19.6hrs \$9,271</b>		<b>14.4hrs \$5,312</b>
GST			\$2,841							
<b>Total (Incl GST)</b>			<b>\$31,250</b>							
Average hourly rate			\$404	\$462	\$371			\$473		\$369

**Work performed**

**Assets**

- \*Identification of assets with commercial value
- \*Attend to commercial and legal issues in connection with proposed sale of corporate shell

**Creditors**

- \*Convene and prepare for first creditors' meeting
- \*Attend to creditors' queries
- \*Proofs of debt

**Investigation**

- \* Collection and review of books and records
- \* Investigate the affairs of the company including various discussions with internal accountant, external accountant and director

**Administration**

- \* Lodgement of statutory documentation upon appointment
- \* File management
- \* Treasury

**SCHEDULE 2**
**REMUNERATION (ACTUAL)  
 METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED)  
 For the period 8 September 2012 to 20 September 2012**
**Part 1: Declaration**

Levi Consulting Pty Ltd and I have undertaken a proper assessment of this remuneration claim for my appointment as Administrator of Metroland Australia Limited in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed was in respect of necessary work, properly performed in the conduct of the Administration.

**Part 2: Description of work completed**

Company	Metroland Australia Limited	Period From	8 September 2012	To	20 September 2012
Practitioner	David Levi	Firm	Levi Consulting Pty Limited		
Administration Type	Voluntary Administration (s 436A Corporations Act 2001)				

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
<b>Assets</b> 41.8 hours \$14,059	Sale of Corporate Shell	Finalise and circulate Confidentiality Agreement and Information Memorandum to interested parties Review offers received Obtain legal advice in connection with offers received
<b>Creditors</b> 36.4 hours \$11,627	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Creditor reports	Preparing section 439A report
	Dealing with proofs of debt	Receipting and filing POD's
	Meeting of Creditors	Attendance at first creditors' meeting Prepare minutes of first creditors' meeting Preparation of notice of second creditors' meeting
<b>Employees</b> 0.2 hours \$105	Workers compensation claims, if any	Correspondence with previous broker
<b>Trade On</b> 0 hours \$0	Trade On Management	Not applicable in this administration
<b>Investigation</b> 17.0 hours \$8,925	Conducting investigation	Review of financial statements, company's books and records and Report as to Affairs Conducting and summarising statutory searches Review of specific transactions and liaising with directors regarding certain transactions Liaising with directors regarding certain transactions
<b>Dividend</b> 0 hours \$0	Processing proofs of debt	No work anticipated to be performed during this period
<b>Administration</b> 11.7 hours \$3,401	Correspondence	
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	Insurance	Correspondence with insurer regarding initial and ongoing insurance requirements Correspondence with previous brokers
	Bank account administration	Preparing correspondence closing accounts Bank account reconciliations
	ASIC forms	Preparing Form 5011
	Planning / Review	Discussions regarding status of administration

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
<b>Total</b> 107.1 hours \$38,117		

**Part 3: Calculation of remuneration - 8.9.12 to 20.9.12 (inclusive)**

Position	\$/hour (ex GST)	Total estimated hours	Total (\$)	Task Area						
				Assets hrs \$	Creditors hrs \$	Employees hrs \$	Trade on hrs \$	Investigation hrs \$	Dividend hrs \$	Administration hrs \$
Administrator D Levi	525	40.1	\$21,053	15.6hrs \$8,190	5.8hrs \$3,045	0.2hrs \$ 105		17.0hrs \$8,925		1.5hrs \$ 788
Supervisor	325	32.1	\$10,433	6.6hrs \$2,145	20.5hrs \$6,663	0hrs \$ 0		0hrs \$ 0		5.0hrs \$1,625
Intermediate 1	190	34.9	\$6,631	19.6hrs \$3,724	10.1hrs \$1,919	0hrs \$ 0		0hrs \$ 0		5.2hrs \$ 988
<b>Total</b>		107.1 hrs	\$38,117	41.8hrs \$14,059	36.4hrs \$11,627	0.2hrs \$ 105		17.0hrs \$8,925		11.7hrs \$3,401
GST			\$3,812							
<b>Total (Incl GST)</b>			\$41,929							
Average hourly rate			\$ 356	\$ 336	\$ 319	\$ 525		\$ 525		\$ 291

**Work performed**
**Assets**

\* Extensive work in connection with the Sale of the Corporate Shell including liaising with lawyers to finalise Confidentiality Agreement and Information Memorandum; circulation of Confidentiality Agreement and Information Memorandum to interested parties; various discussions with parties who have submitted an Expression of Interest; and reviewing offers received.

**Creditors**

\* Preparation for and attendance at first creditors' meeting and statutory issues following meeting  
 \* Attend to creditors' queries  
 \* Proofs of debt  
 \* Preparation for Decision Meeting including drafting of 439A Report  
 \* Considering DOCA Proposal including obtaining legal advice in connection with Proposal

**Employees**

\*Workers compensation

**Investigation**

\* Collection review of books and records  
 \* Investigate the affairs of the company including various discussions with internal accountant, external accountant and director

**Administration**

\* Statutory documentation including Report as to Affairs  
 \* File management  
 \* Treasury including monitoring deposits received into bank account in connection with Information Memorandum

**SCHEDULE 3**
**REMUNERATION (ESTIMATE)**
**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED)**  
**From 21 September 2012 to the End of the Voluntary Administration period**
**Part 1: Declaration**

Levi Consulting Pty Ltd and I have undertaken a proper assessment of this estimated remuneration claim for my appointment as Administrator of Metroland Australia Limited in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work, to be properly performed in the conduct of the Administration.

**Part 2: Description of work to be completed**

Company	Metroland Australia Limited	Period From	21 September 2012	To	End of Voluntary Administration
Practitioner	David Levi	Firm	Levi Consulting Pty Limited		
Administration Type	Voluntary Administration (s 436A Corporations Act 2001)				

Task Area	General Description	Includes
<b>Assets</b> 27.5 hours \$10,258	Sale of Corporate Shell	Attend to issues in connection with Sale of Corporate Shell
<b>Creditors</b> 46.5 hours \$17,093	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Dealing with proofs of debt	Receipting and filing POD's
	Creditor reports	Prepare and circulate 439A Report Prepare and circulate another Report to creditors, if Decision Meeting is adjourned
	Meeting of Creditors	Circulation of Notice of Decision Meeting Attendance at Decision Meeting Preparation and lodgement of minutes of meeting with ASIC Responding to stakeholder queries and questions immediately following meeting If Decision Meeting adjourned, prepare for and convene adjourned Decision Meeting
<b>Employees</b> 0 hours \$0	Employees issues	No work to likely be performed during this period
<b>Trade On</b> 0 hours \$0	Trade On Management – not applicable in this administration	Not applicable in this administration
<b>Investigation</b> 18.0 hours \$6,842	Conducting investigation	Conduct further investigations as required
	ASIC reporting	Preparing statutory investigation report Liaising with ASIC
<b>Dividend</b> 0 hours \$0	Dividend procedures	No work to be performed during this period
<b>Administration</b> 17.9 hours \$5,638	Correspondence	
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers

Task Area	General Description	Includes
	ASIC Form 5011 and other forms	Preparing and lodging ASIC forms
	ATO and other statutory reporting	Preparing BAS
	Planning / Review	Discussions regarding status of administration
<b>Total</b> 109.9 hours \$39,830		

**Part 3: Calculation of Remuneration – 21 September 2012 to end of the Voluntary Administration period**

	Position	\$/hour (ex GST)	Total estimated hours	Total (\$)	Task Area						
					Assets hrs \$	Creditors hrs \$	Employees hrs \$	Trade on hrs \$	Investigation hrs \$	Dividend hrs \$	Administration hrs \$
	Administrator D Levi	525	42.5	\$22,313	12.0hrs \$6,300	18.0hrs \$9,450			8.0hrs \$4,200		4.5hrs \$2,363
	Supervisor	325	34.9	\$11,343	7.5hrs \$2,438	16.5hrs \$5,363			5.5hrs \$1,787		5.4hrs \$1,755
	Intermediate	190	32.5	\$6,175	8.0hrs \$1,520	12.0hrs \$2,280			4.5hrs \$855		8.0hrs \$1,520
	<b>Total</b>		109.9hrs	\$39,830	27.5hrs \$10,258	46.5hrs \$17,093			18.0hrs \$6,842		17.9hrs \$5,638
	GST			\$3,983							
	<b>Total (Incl GST)</b>			\$43,813							
	Average hourly rate			\$362	\$382	\$367			\$380		\$315

**Nature of Work**

The above analysis is prepared on the basis that the Company will resolve to either (i) execute a DOCA; (ii) end the voluntary administration; (iii) enter into liquidation at the Decision Meeting on 5 October 2012.

From 20.9.12 to 5.10.12 (being the date the Decision Meeting), the value of attending to the following work is likely to be \$40,000 plus GST:

- \* Sale of corporate shell including conducting further inquiry in connection with offers received
- \* Investigate the affairs of the Company
- \* Communicate with creditors including preparing and circulating s439A Report to creditors
- \* Convening and preparing for Decision Meeting including circulating Notice of Decision Meeting
- \* Obtaining legal advice in connection with the DOCA Proposal received
- \* Treasury

If the Decision Meeting is adjourned, then the above estimate will increase and the following work will need to be performed:

- \* Statutory issues arising from Decision Meeting
- \* Communicate with creditors including preparing and circulating another Report to creditors for the adjourned Decision Meeting
- \* Convening and preparing for adjourned Decision Meeting including circulating Notice of adjourned Decision Meeting
- \* Obtaining legal advice in connection with the DOCA Proposal received
- \* Treasury

**SCHEDULE 4**
**REMUNERATION (ESTIMATE)**
**METROLAND AUSTRALIA LIMITED (IN LIQUIDATION)**  
**From the date of the Decision Meeting assuming Liquidation (Estimate)**
**Part 1: Declaration**

Levi Consulting Pty Ltd and I have undertaken a proper assessment of this estimated remuneration claim for my appointment as Liquidator of Metroland Australia Limited in accordance with the law and applicable professional standards. I am satisfied that the estimated remuneration claimed is in respect of necessary work, to be properly performed in the conduct of the Administration.

**Part 2: Description of work to be completed**

Company	Metroland Australia Limited	Period From	Decision Meeting	To	End of liquidation
Practitioner	David Levi	Firm	Levi Consulting Pty Limited		
Administration Type	Creditors' voluntary winding up (s 439C Corporations Act 2001)				

Task Area	General Description	Includes
<b>Assets</b> 6.3 hours \$2,305	Assets	Asset realisations. In a liquidation scenario, asset recoveries would be from insolvent trading proceedings, if successful. See investigation section below.
<b>Creditors</b> 28.5 hours \$10,824	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Correspondence with committee of creditors members
	Creditor reports	Preparing general reports to creditors
	Meeting of Creditors	Preparation and lodgement of minutes of meetings with ASIC Responding to stakeholder queries and questions immediately following meeting
<b>Employees</b> 0 hours \$0	Employee issues	No work anticipated to be performed, unless GEERS claims arise.
<b>Trade On</b> 0 hours \$0	Trade On Management – not applicable in this administration	
<b>Investigation</b> 26.4 hours \$9,681	Conducting investigation	Preparation and lodgement of investigation file with ASIC Preparation and lodgement of supplementary report if required
	Examinations	Preparing brief to solicitor Liaising with solicitor re examinations Attendance at examination Reviewing examination transcripts Liaising with solicitor re outcome of examination and further actions available
	Litigation/Recoveries	Internal meeting to discuss status of litigation Preparing brief to solicitor Liaising with solicitor re recovery action/s Attending to negotiations Attending to settlement matters
<b>Dividend</b> 10.4 hours \$3,756	Dividend procedures	Work in connection with declaring a dividend, if there are recoveries from insolvent trading proceedings.
<b>Administration</b>	Correspondence	

Task Area	General Description	Includes
24.4 hours \$7,626	Document maintenance/file review/checklist	Six monthly administration review Filing of documents File reviews Updating checklists
	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 524, etc Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	Notification of appointment of Deed Administrator Preparing BAS Completing group certificates
	Finalisation	Notifying ATO of finalisation Cancelling ABN / GST / PAYG registration Completing checklists Finalising WIP
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Dealing with records in storage Sending job files to storage
<b>Total</b> 96.0 hours \$34,192		

### Part 3: Calculation of Remuneration – Commencement of liquidation to completion

Position	\$/hour (ex GST)	Total estimated hours	Total (\$)	Task Area						
				Assets hrs \$	Creditors hrs \$	Employees hrs \$	Trade on hrs \$	Investigation hrs \$	Dividend hrs \$	Administration hrs \$
Liquidator, D Levi	525	34.4	\$18,060	2.5hrs \$1,312	12.4hrs \$6,510			10.5hrs \$5,512	3.5hrs \$1,837	5.5hrs \$2,887
Supervisor	325	32.8	\$10,660	2.0hrs \$650	9.3hrs \$3,022			8.5hrs \$2,763	4.5hrs \$1,463	8.5hrs \$2,763
Intermediate 1	190	28.8	\$5,472	1.8hrs \$342	6.8hrs \$1,292			7.4hrs \$1,406	2.4hrs \$456	10.4hrs \$1,976
<b>Total</b>		96.0 hrs	\$34,192	6.3hrs \$2,305	28.5hrs \$10,824			26.4hrs \$9,681	10.4hrs \$3,756	24.4hrs \$7,626
GST			\$3,419							
<b>Total (Incl GST)</b>			\$37,611							
Average hourly rate			\$356	\$336	\$380			\$374	\$365	\$347

#### Nature of Work

- \* Statutory issues arising from the Decision Meeting, and the outcome of that meeting
- \* Commercial issues arising from the Decision Meeting, and the outcome of that meeting
- \* Report to ASIC
- \* Report to creditors
- \* Pursue insolvent trading and other recovery proceedings
- \* Distribution of dividend, if funds available from insolvent trading and other recovery proceedings
- \* Attending to the duties and responsibilities of a Liquidator
- \* Treasury

#### Estimate

This is an estimate. The value of time may vary from the estimate. All amounts exclude GST.

**SCHEDULE 5**
**REMUNERATION (ESTIMATE)**
**METROLAND AUSTRALIA LIMITED (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)  
 From the date of the Decision Meeting assuming Deed of Company Arrangement (Estimate)**
**Part 1: Declaration**

Levi Consulting Pty Ltd and I have undertaken a proper assessment of this estimated remuneration claim for my possible appointment as Deed Administrator of Metroland Australia Limited in accordance with the law and applicable professional standards. I am satisfied that the estimated remuneration claimed is in respect of necessary work, to be properly performed in the conduct of the Administration.

**Part 2: Description of work to be completed**

Company	Metroland Australia Limited	Period From DOCA	Decision Meeting	To	Completion of DOCA
Practitioner	David Levi	Firm	Levi Consulting Pty Limited		
Administration Type	Deed of Company Arrangement (s 439C Corporations Act 2001)				

Task Area	General Description	Includes
<b>Assets</b> 18.9 hours \$7,719	Sale of Corporate Shell	Attend to issues in connection with sale of corporate shell
<b>Creditors</b> 15.0 hours \$5,167	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Correspondence with committee of creditors members
	Proof of debt	Assessment of POD's received
	Creditor reports	Preparing general reports to creditors
	Meeting of Creditors	Preparation and lodgement of minutes of meetings with ASIC Responding to stakeholder queries and questions immediately following meeting
<b>Employees</b> 0 hours \$0	Employee issues	No work anticipated to be performed during this period
<b>Trade On</b> 0 hours \$0	Trade On Management – not applicable in this administration	
<b>Investigation</b> 8.3 hours \$3,389	Conducting investigation	Additional investigation, as required
<b>Dividend</b> 0 hours \$0	Dividend procedures	No work is expected to be performed during this period
<b>Administration</b> 14.9 hours \$3,728	Correspondence	
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 524, etc Correspondence with ASIC regarding statutory forms



Task Area	General Description	Includes
	ATO and other statutory reporting	Notification of appointment of Deed Administrator Preparing BAS Completing group certificates
	Finalisation	Notifying ATO of finalisation Cancelling ABN / GST / PAYG registration Completing checklists Finalising WIP
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Dealing with records in storage Sending job files to storage
<b>Total</b> 54.5 hours \$20,003		

### Part 3: Calculation of Remuneration – Date of adjourned Decision Meeting to completion of the DOCA

Position	\$/hour (ex GST)	Total estimated hours	Total (\$)	Task Area						
				Assets hrs \$	Creditors hrs \$	Employees hrs \$	Trade on hrs \$	Investigation hrs \$	Dividend hrs \$	Administration hrs \$
Deed Administrator D Levi	525	18.7	\$9,818	9.7hrs \$5,093	4.5hrs \$2,362			4.0hrs \$2,100		4.5hrs \$2,363
Supervisor	325	21.4	\$6,955	6.5hrs \$2,113	6.0hrs \$1,950			3.5hrs \$1,137		5.4hrs \$1,755
Intermediate 1	190	17.0	\$3,230	2.7hrs \$ 513	4.5hrs \$855			0.8hrs \$152		9.0hrs \$1,710
<b>Total</b>		57.1hrs	\$20,003	18.9hrs \$7,719	15.0hrs \$5,167			8.3hrs \$3,389		14.9hrs \$3,728
<b>GST</b>			\$2,000							
<b>Total (Incl GST)</b>			\$22,003							
<b>Average hourly rate</b>			\$350	\$408	\$344			\$408		\$250

#### Nature of Work

Work that is anticipated to be performed during the DOCA, include the following:

- \* Attending to statutory and commercial issues arising from the Decision Meeting
- \* Liaising with stakeholders in connection with the Creditors' Trust Deed.
- \* Additional work as required in connection with the sale of the corporate shell.
- \* Conduct further investigation as required
- \* Reporting to creditors.

#### Estimate

This is an estimate. The value of time may vary from the estimate.

All amounts exclude GST.

## **Disbursements**

In addition to the liquidator's claim of remuneration, the liquidator will also claim disbursements on the following basis. Disbursements are divided into three types: A, B1 and B2.

- A** Disbursements for all externally provided professional services. These are recovered at cost. An example of an A disbursement is legal fees.
- B1** Disbursements for externally provided non-professional costs such as document production, travel, accommodation, search fees and document storage. B1 disbursements are recovered at cost.
- B2** Disbursements are internally provided non-professional costs such as photocopying and document storage. B2 disbursements are charged at cost except for photocopying, printing, stationery, boardroom hire, and telephone calls which charged at a rate which is intended to recoup both variable and fixed costs.

Full details of disbursements on this appointment have been provided in the attached summary of receipts and payments (Annexure 5) and full details of future disbursements will be provided in future statements of receipts and payments. Creditor approval for the payment of disbursements is not required, however I must account to creditors. Creditors have the right to question the incurring of the disbursements and can challenge disbursements in court.

## **Statement of Remuneration Claim**

At the meeting of creditors to be held on Metroland Australia Limited, creditors will be asked to pass the following resolutions.

### **Administrator's Accrued Fees**

"That the remuneration of the Administrator of Metroland Australia Limited for the period 31 August 2012 to 7 September 2012 in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator's firm, be approved at \$28,409 plus GST."

### **Administrator's Accrued Fees**

"That the remuneration of the Administrator of Metroland Australia Limited for the period 8 September 2012 to 20 September 2012, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator's firm, be approved at \$38,117 plus GST."

### **Administrator's Prospective Fees**

"That the remuneration of the Administrator of Metroland Australia Limited for the period 21 September 2012 to the end of the Administration period, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator's firm, be approved up to an amount of \$40,000 plus GST."

### **Liquidator's Prospective Fees**

"That the remuneration of the Liquidator (if appointed) of Metroland Australia Limited, for the period from appointment, in respect of the appointee and his staff, be calculated at the hourly rates of the Liquidator's firm, and approved up to an interim amount of \$35,000 plus GST."

**Deed Administrator's Prospective Fees**

"That the remuneration of the Deed Administrator (if appointed) of Metroland Australia Limited for the period from appointment, in respect of the Deed Administrator and his staff, be calculated at the hourly rates of the Deed Administrator's firm, and approved up to an amount of \$20,000 plus GST."

**Queries**

The above information is provided to assist creditors in considering the appropriateness of the remuneration claim that is being made.

Creditors should feel free to contact the Liquidator's office to seek further information claim if they so need.

## Creditor Information Sheet

### Approving remuneration in external administrations

**Information sheet for creditors on approving remuneration in external administrations. Provided to creditors pursuant to the Code of Professional Practice for Insolvency Practitioners issued by the Insolvency Practitioners Association of Australia.**

If company is in financial difficulty, it can be put under the control of an independent insolvency administrator. Such a person is called a 'liquidator' or a 'voluntary administrator' or an 'administrator of a deed of company arrangement' depending on the type of administration involved. For the purposes of this guide, we use the collective word 'administrator'.

This information sheet gives general information for creditors on the approval of an administrator's fees in a liquidation, a voluntary administration or a deed of company arrangement (other forms of insolvency administration are beyond the scope of this information sheet). It outlines the rights that creditors have in the approval process.

### Work undertaken by administrators

The work undertaken by administrators depends on the type of administration concerned and the issues that need to be resolved. Some issues are straightforward, while others are more complex.

However, what is common amongst all administration types is that an administrator is, by law, required to undertake a number of tasks which may not directly benefit creditors (for example, the preparation of reports to the Australian Securities and Investments Commission or the preparation of six monthly receipts and payments). An administrator is still entitled to remuneration for undertaking these statutory tasks.

For more information on the tasks involved in different administrations, see ASIC's information sheets: 'Liquidation: a guide for creditors' and 'Voluntary administration: a guide for creditors'.

### Entitlement to fees and costs

An administrator is entitled:

- to be paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- to be reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

Administrators are entitled to an amount of fees for the necessary work that they and their staff properly perform in the administration.

Out-of-pocket costs that are commonly reimbursed include:

- legal fees
- valuer's, real estate agent's and auctioneer's fees

- trading costs involved in running the company's business during the administration (e.g. for the purchase of stock)
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the administrator will, generally, be paid from the company's available assets before any payments to creditors are made. If there are not enough assets, the administrator may arrange for a third party, for example another creditor, to pay any shortfall. As a creditor, you should receive details of such arrangements.

If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid and the administrator is in effect 'out of pocket'.

### Calculation of fees

Fees of an administrator may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the administrator and their staff, according to hourly rates,
- a quoted *fixed fee*, based on an estimate of the costs, or
- a *percentage*, usually of asset realisations.

Charging on the basis of time spent is the most common method. Administrators have a scale of hourly rates, with different rates for each category of staff working on the administration, including the administrator.

If the administrator intends to charge on a time basis, you should receive a copy of these hourly rates before the administrator requests approval of their fees.

The administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to realise that administrators are professionals who are required to have accounting qualifications and maintain up-to-date knowledge of accounting, business and legal issues. They have serious responsibilities under the law. Their hourly rates and those of their qualified staff reflect this.

The hourly rates do not represent an hourly wage for the administrator and their staff. The administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, and taxes with allowance then made for profit.

Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the administrator for their services.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the administrator about the fees and whether the rates are negotiable.

It is up to the administrator to justify why the method chosen for calculating fees is an appropriate method for the particular administration. As a creditor, you also have a right to question the administrator about the calculation method used and how the calculation was made.

### Report on proposed fees

In order to seek approval of fees, the administrator must hold a meeting of the members of any committee of creditors, or, if there is no committee, the creditors themselves. A report must be sent, with the notice of meeting, setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable

- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

The report should also provide a summary of out-of-pocket costs incurred or expected to be incurred.

Committee members/creditors may be asked to approve fees for work already performed or fees based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable for creditors to set a maximum limit ('cap') on the amount that the administrator may receive. For example, 'future fees are approved calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'. If the work involved then exceeds this figure, the administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

### Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The administrator must provide sufficient information to enable the creditors' committee, the creditors or the court to make an informed assessment as to whether the fees are reasonable.

**Table 1: Who may approve fees**

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ <sup>1</sup>	✓ <sup>2</sup>	✓ <sup>3</sup>
Administrator of a deed of company arrangement	✓ <sup>1</sup>	✓ <sup>2</sup>	✓ <sup>3</sup>
Creditors' voluntary liquidator	✓ <sup>1</sup>	✓ <sup>4</sup>	✗ <sup>5</sup>
Court-appointed liquidator	✓ <sup>1, 6</sup>	✓ <sup>2, 6</sup>	✓ <sup>3</sup>

<sup>1</sup> If there is one.

<sup>2</sup> If there is no creditors' committee or the committee fails to approve the fees.

<sup>3</sup> If there is no approval by creditors.

<sup>4</sup> If there is no creditors' committee.

<sup>5</sup> Unless an application is made for a fee review.

<sup>6</sup> If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5,000, or more if specified in the *Corporations Regulations 2001*.

### Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, it is important that the members realise that they represent all the creditors, not just their own individual interests.

A creditors' committee will generally only be set up where there are a large number of creditors. If there is one, then they will ask the committee to approve their fees. A creditors' committee makes its decision by a majority in number of its members present in person at a meeting, but it can only act if a majority of its members attend.

If you would like to know more about creditors' committees and how they are formed, see ASIC's information sheets: 'Liquidation: a guide for creditors', 'Voluntary administration: a guide for creditors' and 'Insolvency: a glossary of terms'.

### Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. The vote requires a simple majority of creditors present and voting, in person or by proxy, indicating that they agree to the resolution. Unlike

committee members, creditors may vote according to their individual interests.

If a 'poll' is taken at the meeting (that is, rather than a vote being decided on the voices or by a show of hands, a count of each vote and its value is taken), a majority in number and value of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the administrator as a proxy to vote on the creditor's behalf. An administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

### Deciding if fees are reasonable

If you are asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the administration and the results of that work.

The IPA's Code of Professional Practice: Remuneration outlines the steps administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve fees, including when those creditors are acting in their capacity as committee members. This guide is available on the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au). If you need more information about fees than is provided in the administrator's report, you should let them know before the meeting at which fees will be voted on.

### What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

### Reimbursement of out-of-pocket costs

An administrator should be very careful incurring costs that must be paid from the administration—as careful as if they were incurring the expenses on their own behalf. Their report on fees sent to creditors should also include information on the out-of-pocket costs of the administration.

If you have questions about any of these costs, you should ask the administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

### Queries and complaints

You should first raise any queries or complaints with the administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with the IPA at [www.ipaa.com.au](http://www.ipaa.com.au) or write to:

Complaints Manager  
IPA  
GPO Box 3921  
SYDNEY NSW 2001

You can also contact ASIC at [www.asic.gov.au](http://www.asic.gov.au), or write to:

Manager National Assessment & Action  
ASIC  
GPO Box 9827  
IN YOUR CAPITAL CITY

Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through [infoline@asic.gov.au](mailto:infoline@asic.gov.au), or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

### To find out more

For an explanation of terms used in this information sheet, see ASIC's 'Insolvency: a glossary of terms'.

For more on insolvency administration, see ASIC's related information sheets at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets):

- Voluntary administration: a guide for creditors
- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors

These are also available from the Insolvency Practitioners Association (IPA) website at [www.ipaa.com.au](http://www.ipaa.com.au).

The IPA website also contains the IPA's Code of Professional Practice that is applicable to its members.

**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.

**Annexure 8**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
Proposal for a Deed of Company Arrangement (Offer 2)**

To be considered in conjunction with Section 6 of the Administrator's Report dated 26 September 2012.

**METROLAND AUSTRALIA LIMITED A.C.N. 009 138 149**  
**(ADMINISTRATOR APPOINTED) ("the "Company")**  
**PROPOSED RESOLUTION**

That the Company be required to execute within 15 Business Days, a Deed of Company Arrangement ("the DOCA") and any other necessary documentation and procure execution of any other necessary documentation from other parties, to the satisfaction of the Administrators, to give effect to the following:-

**The DOCA**

1. David Levi is to be the Deed Administrator of the DOCA ("the Deed Administrator").
2. The Deed Fund will be comprised of:
  - (a) the cash which the Administrator has in his administration account;
  - (b) the sum of \$200,000.00.
3. The DOCA shall provide that the Deed Fund shall be partially distributed in the following order of priority:
  - (a) Firstly, in payment of the Administrator's Expenses;
  - (b) Secondly, in payment of the Administrator/Deed Administrator's Disbursements; and
  - (c) Finally, in payment of the Administrator/Deed Administrator's Remuneration.
4. The balance left in the Deed Fund after distributions have been made out of the Deed Fund in accordance with clause 3 above, shall be known as the "DOCA Trust Contribution".
5. Until the assignment of the DOCA Trust Contribution is made to the Trust (see below), all monies paid under the DOCA are to be held by the Deed Administrator for the benefit of the Administrator, Deed Administrator and Participating Creditors.
6. All creditors' claims (except the claims of the Deferred Creditors, who are identified below) which have arisen up to and including 31 August 2012 will be extinguished upon the effectuation of the DOCA. Any claims unsecured creditors may have against the Company shall be replaced with a right to claim against the Trust pursuant to the terms of the Trust Deed.
7. Upon execution of the DOCA, control and stewardship of the Company will revert to the directors of the Company (the "Directors").
8. The DOCA will be immediately effectuated once the payments referred to in paragraph 3 have been made to the Administrator/Deed Administrator in full and the Deed Administrator determines, in his absolute discretion, that all aspects of the DOCA have been complied with.
9. The DOCA shall contain such other provisions as the *Corporations Act* may require.
10. The Deed Fund must be paid to the Administrator/Deed Administrator on or before the execution of the DOCA by the Deed Administrator.

**The Trust**

11. The Company is required, on a day which is not more than 15 Business Days from the date of the second meeting of creditors of the Company which was convened pursuant



to section 439A of the *Corporations Act 2001 (Cth)*, and otherwise on the same day as the DOCA is entered into, to execute the Metroland Creditors' Trust Deed ("the Trust Deed").

12. The Deed Administrator is to be the Trustee under the Trust Deed ("the Trustee"). Peter Joseph Wright is to be the settlor of the Trust Deed. The Trust Deed will be settled for \$10.00. Nominal stamp duty must be paid on the Trust Deed immediately after execution of the Trust Deed and prior to execution of the DOCA.
13. The Company is to authorise the Trustee to enter into the Trust Deed.
14. The Trust Deed will establish a Trust for the benefit of creditors of the Company ("the Trust").
15. All claims of creditors shall be determined under the Trust Deed by the creditors lodging a proof of debt with the Trustee, as if he was the Deed Administrator of the DOCA.
16. The Trustee will be empowered to:
  - (a) administer the Trust;
  - (b) do anything else necessary or desirable to effect and carry out the terms of the DOCA and/or the Trust Deed.
17. The Trust Deed must be entered into before the DOCA is effectuated.
18. Immediately prior to the effectuation of the DOCA the Company must assign, convey and set over to the Trust the amount of the DOCA Trust Contribution.
19. The Company is to pay all stamp duty on the Trust Deed and the assignment conveyance or set over to the Trust.
20. Payment to creditors will be made in accordance with the terms of the Trust Deed.

#### **Distribution under the Trust Deed**

21. The Trust Deed shall provide that Trust Fund shall be applied, in order of priority, as follows:
  - (a) Firstly, the Trustee's disbursements, plus GST;
  - (b) Secondly, the remuneration of the Trustee plus GST, in his capacity as acting as Trustee of the Trust at the rates issued from time to time by Levi Consulting, plus GST, the Trustee being authorised to draw such remuneration, plus GST, from monies held by him;
  - (c) Thirdly, in payment of Priority Creditors and subrogating employee creditors, if any; and
  - (d) Finally, the balance to be distributed pro-rata to admitted participating ordinary unsecured, partly-secured and contingent creditors (except the Deferred Creditors and the Priority Creditors).

#### **Deferred Creditors & Participating Creditors**

22. Related parties, being Frank Shien, ML Superfund, Metroland Management Services Pty Limited, Metroland Funds Management Limited and Premier Realty Pty Limited ("the Deferred Creditors") will defer their claims against the Company in full until dissolution of the Trust.

23. Creditors who participate in the Trust Fund are to accept their entitlements under the Trust Deed in full settlement of their claims, except the Deferred Creditors.
24. The claims of the Deferred Creditors shall be extinguished on termination of the Trust.
25. Should the Department of Workplace Relations ("DWR") or any other party ("Subrogating Employee Creditors") pay any employee entitlements in respect of which employees would otherwise be entitled to priority under Section 556 of the *Corporations Act*, then such subrogating employee creditors be entitled to participate in the Trust Deed in lieu of relevant employees in respect of any monies so paid.
26. For the avoidance of doubt:
  - (i) Only employee entitlements that have crystallised and become due and payable before the date of execution of the DOCA will be paid out of the Trust. Any other employee entitlements will be paid by the Company in the ordinary course of business and in accordance with the provisions of the law.
  - (ii) Employee creditors and subrogating employee creditors to accept their entitlements out of the Trust or as paid in the ordinary course of business in full settlement of their claims.
  - (iii) Ordinary unsecured creditors and contingent creditors to accept their entitlements out of the Trust Deed in full settlement of their claims (except the Deferred Creditors).

### **General**

27. The Deed Administrator/Trustee will have full access to all Company records on an ongoing basis until dissolution of the Trust.
28. Payments by the Company or other parties to the Deed Administrator or the Trustee are non refundable. The Company will secure an undertaking to this effect from any third party who makes payment of any monies due under the DOCA, the Trust Deed or ancillary documentation.
29. Additional to any power of the Deed Administrator at law, if the Company is unable to comply with any of the fundamental provisions of the DOCA including payment of monies due pursuant to the DOCA, and/or the Deed Administrator forms the view that the Company is unlikely to be able to comply with the terms of the DOCA, then the Deed Administrator be entitled to convene a meeting of the Company's creditors at which creditors may resolve to:
  - (i) vary the DOCA ; or
  - (ii) terminate the DOCA; or
  - (iii) terminate the DOCA and wind up the company appointing the Deed Administrator as its liquidator; or
  - (iv) enforce the terms of the DOC& or
  - (v) approve any other proposal permitted under the *Corporations Act*.

### **Termination of Trust**

30. The Trust created by the Trust Deed shall terminate:

- (a) upon distribution of Trust Fund in accordance with the Trust contained in the Trust Deed and payment of all taxation due on any interest accrued on the Trust Fund;
  - (b) if the DOCA is set aside or terminated (other than a termination by way of effectuation); or
  - (c) the last day of the perpetuity period, being 80 years from the date of the Trust Deed, or
  - (d) by any order of any Court having jurisdiction to make such an order,
- whichever occurs earlier, provided that the Trustee has received payment of the Trustee's remuneration and the Trustee's disbursements.
31. Once Trust Fund is distributed in accordance with the Trust and upon payment of all taxation payable on interest accrued on the Trust Fund for interest, the Trust will terminate.
  32. Creditors acknowledge that to give effect to this resolution the Administrator, will as soon as possible, arrange for execution of the DOCA, the Trust Deed, in the form of, or substantially the same form as that which is attached to the Administrator's report to creditors, together with all other relevant documentation needed to give effect to this resolution.
  33. If the Company fails to execute the DOCA to the satisfaction of the Administrator within 15 Business Days then the Company will be wound up and David Levi will be appointed its liquidator.

**Annexure 9**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
MTD Group FY2011 Annual Report**

The above document can be downloaded free at:

<http://www.asx.com.au/asx/statistics/announcements.do>

Alternatively, a copy can be obtained from me. The ASX code for Metroland Australia Limited is MTD.

**Annexure 10**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
MTD Group Appendix 4D – Half Year Report for the 6 months ended 31 December 2011–  
Results Announcement to the Market dated 29 February 2012**

The above document can be downloaded free at:

<http://www.asx.com.au/asx/statistics/announcements.do>

Alternatively, a copy can be obtained from me. The ASX code for Metroland Australia Limited is MTD.

**Annexure 11**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
MTD Group Appendix 4E “Preliminary Report for the year ended 30 June 2012” and dated 31  
August 2012**

The above document can be downloaded free at:

<http://www.asx.com.au/asx/statistics/announcements.do>

Alternatively, a copy can be obtained from me. The ASX code for Metroland Australia Limited is MTD.

**Annexure 12**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149**  
**Search – ASX Listed Company Information**

The above document can be downloaded free at:

<http://www.asx.com.au/asx/statistics/announcements.do>

Alternatively, a copy can be obtained from me. The ASX code for Metroland Australia Limited is MTD.



**Annexure 13**

**METROLAND AUSTRALIA LIMITED (ADMINISTRATOR APPOINTED) ACN 009 138 149  
MTD Balance Sheet (unaudited) as at 31 August 2012 with comparatives**

Attached is an analysis in support of the information on the financial position of MTD (rather than MTD Group) at various milestones - 30 June 2011, 31 December 2011, 30 June 2012 and 31 August 2012 provided to me by MTD. The analysis is not prepared by the Administrator. The Administrator has reviewed the analysis and also made enquiry of MTD Director, Mr Shien. Explanations have been provided in connection with movements and balances.

This Schedule should be read in conjunction with the Report of the Administrator dated 26 September 2012, and particularly, Section 6 of the Report.



Metroland Australia Limited

	Jun-11	Dec-11	Jun-12	Aug-12	Movement	Notes
<b>ASSETS</b>						
Bank	22,690	2,094	64,007	3,460		
VA Trust Account	-	-	-	103,055	103,055	
Distributions rec'able - Gaintak	3,432,520	-	-	-	3,432,520	1
Management fees rec'able - Supacenta	3,000,000	3,000,000	-	-	3,000,000	2
Dividends rec'able - MetroConstructions	406,851	406,851	-	-	406,851	3
Loan - Gamini Colless	45,000	45,000	45,000	45,000	-	
Provision for impairment	-	-	45,000	45,000	-	
Deferred tax asset	54,125	-	-	-	-	
Investment - subsidiaries	227,217	205,681	204,371	204,316	22,901	4
Investments - Archifield Rd	36,000	36,000	36,000	36,000	-	
Investment - Quay St	2,045,526	-	-	-	2,045,526	5
Provision for impairment	338,000	-	-	-	338,000	5
Investment - Ausbao	490	-	-	-	490	5
Loan - Greenway Australia Properties	2,007,248	2,007,248	-	-	2,007,248	2
Provision for impairment	-	2,007,248	-	-	-	2
Loan - Gaintak Investments P/L	6,939,754	6,939,754	-	-	6,939,754	2
Provision for impairment	-	1,005,218	-	-	-	2
Loan - Goldwest Metro P/L	8,521,056	-	-	-	8,521,056	6
Loan - Supacenta	789,247	789,247	-	-	789,247	2
Provision for impairment	-	789,247	-	-	-	2
Loan - Metroland Constructions P/L	130,717	200,524	-	-	-	6
Loan - Gaintak Note Company Ltd	164	164	-	-	-	6
Loan - Global	1,793,512	3,047,182	3,026,785	3,095,868	1,302,355	7
Provision for impairment	-	-	-	3,095,868	-	
Loan - Canterbury Metro P/L	340	-	-	-	-	
Fixed assets	156,462	145,804	125,998	119,127	-	
Other	56,251	33,463	28,412	47,630	-	
<b>TOTAL ASSETS</b>	<b>29,327,171</b>	<b>13,053,111</b>	<b>3,485,573</b>	<b>506,667</b>	<b>28,820,504</b>	
<b>LIABILITIES</b>						
Creditors & accruals	267,010	387,377	640,845	486,528	219,519	
Deferred tax liability	-	303,247	273,836	273,836	-	
Super & PAYG payable	16,842	11,266	8,593	7,670	-	
Interest payable	554,835	611,106	3,287	3,299	551,536	2
Dividends payable	89,524	89,524	89,524	89,524	-	
Employee entitlements	20,055	23,715	19,213	1,310	-	
Loan - Kings Properties (Australia)	526	526	-	-	526	6
Loan - Metroland Investments P/L	14,797	-	-	-	14,797	6
Loan - Stratawide Management P/L	41,500	92,750	61,983	30,172	-	
Loan - Metroland Funds Management Ltd	21,259	45,566	65,566	65,566	-	
Loan - Metroland Management Services	548,843	450,217	379,530	365,762	-	
Loan - NX Holdings P/L	120,000	-	-	-	120,000	2
Loan - Rungkat	1,675,000	1,675,000	421,723	321,723	1,353,277	2
Loan - ML Superfund	35,800	176,800	12,000	4,000	31,800	2
Loan - Taskin	1,945,000	328,590	-	-	1,945,000	2/5
Loan - Steam Leung	500,000	-	-	-	500,000	5
Loan - Frank Shien	140,000	-	-	-	140,000	2
Loan - Nicholas Chen	35,000	-	-	-	35,000	2
Loan - Zhao Sun	500,000	250,000	-	-	500,000	2
Loan - X He	4,063	-	-	-	4,063	
Loan - Qua Lee Eng	-	1,145,000	-	-	-	2
Loan - CN Investments	-	642,770	-	-	-	2
Loan - XPC Investments	-	764,459	15,000	7,000	7,000	2
Loan - Macquarie Bank	-	5,597	-	7,270	-	
<b>TOTAL LIABILITIES</b>	<b>6,530,053</b>	<b>7,003,510</b>	<b>1,991,100</b>	<b>1,663,660</b>		
<b>NET ASSETS</b>	<b>22,797,118</b>	<b>6,049,601</b>	<b>1,494,473</b>	<b>1,156,993</b>	<b>23,954,111</b>	
<b>EQUITY</b>						
Issued shares	15,112,773	15,112,773	15,112,773	15,112,773	-	
Accumulated losses	8,031,961	7,684,345	7,684,345	13,613,617	-	
Current losses	347,616	16,747,517	21,302,645	170,521	-	
	<b>22,797,118</b>	<b>6,049,601</b>	<b>1,494,473</b>	<b>1,669,677</b>	<b>21,127,441</b>	

Notes:

- Distributions taken up in accounts from Gaintak Investments during the 2008 year when Gaintak had an accounting profit resulting from revaluation increment of Greenway Plaza property. No taxable income to pay distribution. Distribution is now not payable due to large accounting & tax losses. Receivable reversed in December 2011 half-year accounts.
- On 31 March 2012, Metroland assigned the entitlement to its debts owing by Supacenta entities to CMC Trading, in exchange for CMC Trading assuming liabilities & loans payable by Metroland. The amount of the liabilities assumed was equivalent to the book value of the debts owing by Supacenta entities. The book value of debts reflected significant impairment as a result of the significant impairments to the Supacenta entity investment properties. In addition to the exchange of debts and liabilities, Metroland also sold its remaining 25.05% interest in the Supacenta entities. The consideration for the sale was based on the net asset values of the Supacenta entities at 31/3/2012. At that date, the Supacenta entities had a significant net deficiency in assets, accordingly, the entities were sold for nominal value.
- Following adjustment by Metroland Constructions to reflect the actual balance of debts rec'able from Supacenta for the Supacenta development, the retained earnings of company did not entitle any dividends to be paid. Accordingly, any dividend rec'able was reversed.
- Investments written off following de-registration of subsidiaries.
- Metroland's 2.93% in the Quay St investment was disposed of in August 2011. Proceeds from disposal was used to pay-off principally Taskin & Steam Leung loans.
- Loans to subsidiaries forgiven by Metroland when application was made by subsidiaries for de-registration.
- Further loans to subsidiary, Global were for working capital purposes, and \$1m to enable Global to partially repay down its Campbelltown Square property loan.