

7 October 2009

Company Announcements Platform  
ASX Limited

Dear Sir or Madam

**The Maryborough Sugar Factory Limited - Offer for Tully Sugar Limited**

We enclose, in accordance with section 633(1) item 5 of the Corporations Act, a copy of our bidder's statement (including the offer document) ("**Bidder's Statement**") in relation to our off-market offer for the shares in Tully Sugar Limited (ABN 92 011 030 256).

The Bidder's Statement was lodged with the Australian Securities & Investments Commission and served on Tully Sugar Limited earlier today.

Yours faithfully



G.R. Clarey  
Company Secretary

Encl

# BIDDER'S STATEMENT

## The Maryborough Sugar Factory Limited

ABN 11 009 658 708



is offering to purchase all of your shares in:

## Tully Sugar Limited

ABN 92 011 030 256

For each Tully Share you will receive 13 MSF Shares.

# ACCEPT

The Offer is dated 21 October 2009 and will close at 6.00pm (AEST) on 11 December 2009, unless extended.

### **THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION**

This Bidder's Statement is given by The Maryborough Sugar Factory Limited under Part 6.5 of the Corporations Act. If you are in any doubt as to how to deal with it, you should consult your legal, financial or other professional adviser as soon as possible.

Please call 1300 851 394 (callers in Australia) or +61 2 8280 7912 (callers outside Australia) if you require assistance with your acceptance.

# Bidder's Statement

## Important information

This Bidder's Statement is given by The Maryborough Sugar Factory Limited (ABN 11 009 658 708) ("**MSF**") to Tully Sugar Limited (ABN 92 011 030 256) ("**Tully**") under Part 6.5 of the Corporations Act and sets out certain disclosures required by the Corporations Act together with the terms of the Offer to acquire your Tully Shares.

This Bidder's Statement is dated 7 October 2009 and includes an Offer dated 21 October 2009 in Appendices 1 and 2 of this Bidder's Statement.

## Australian Securities and Investments Commission

A copy of this Bidder's Statement was lodged with ASIC on 7 October 2009. ASIC takes no responsibility for the content of this Bidder's Statement.

## Defined terms

Terms used in this Bidder's Statement are defined in the Glossary.

## Investment decisions

This Bidder's Statement does not take into account the individual investment objectives, financial situation or particular needs of each Tully Shareholder. You should consider seeking independent legal, financial and taxation advice before deciding whether or not to accept the Offer.

## Notice to foreign Tully Shareholders (if any)

This Bidder's Statement does not constitute an offer to sell, nor the solicitation of an offer to buy, any MSF Shares in any jurisdiction in which it would not be lawful to make such an offer. No action has been taken to register or qualify MSF or otherwise permit a public offering of MSF Shares outside Australia or New Zealand.

Investors resident in places other than Australia or New Zealand should note that the Offer is being proposed and will be conducted in accordance with the laws in force in Australia and with the ASX Listing Rules. The disclosure requirements in relation to the Offer in Australia and New Zealand will differ from those applying in other jurisdictions.

The distribution of this Bidder's Statement may, in some countries, be restricted by law or regulation. Accordingly, persons who come into possession of this Bidder's Statement should inform themselves of, and observe, those restrictions.

## Disclosure regarding forward looking statements

This Bidder's Statement contains certain forward looking statements which have not been based solely on historical facts, but are rather based on MSF's current expectations about future events and results. These forward looking statements are, however, subject to risks, uncertainties and assumptions which could cause actual events or results to differ materially from the expectations described in such forward looking statements. These factors include, amongst other things, the risks identified in section 8, as well as other matters not yet known to MSF or not currently considered material by MSF.

## Important dates

Announcement Date	27 August 2009
Bidder's Statement lodged with ASIC	7 October 2009
Date of the Offer	21 October 2009
Offer scheduled to close (unless extended)	6.00pm AEST on 11 December 2009

**Note:** the closing date for the Offer may change as permitted by the Corporations Act.

## Privacy statement

MSF has collected your information from the register of Tully Shareholders for the purposes of making the Offer and, if accepted, administering your holding of Tully Shares. The Corporations Act requires the names and addresses of Tully Shareholders to be held in a public register. Your information may be disclosed on a confidential basis to MSF, related bodies corporate and holders of securities in MSF or its related bodies corporate and external service providers, and may be required to be disclosed to regulators, such as ASIC. The registered office of MSF is 114-116 Kent Street, Maryborough, Queensland 4650.

## Key features of the MSF merger Offer

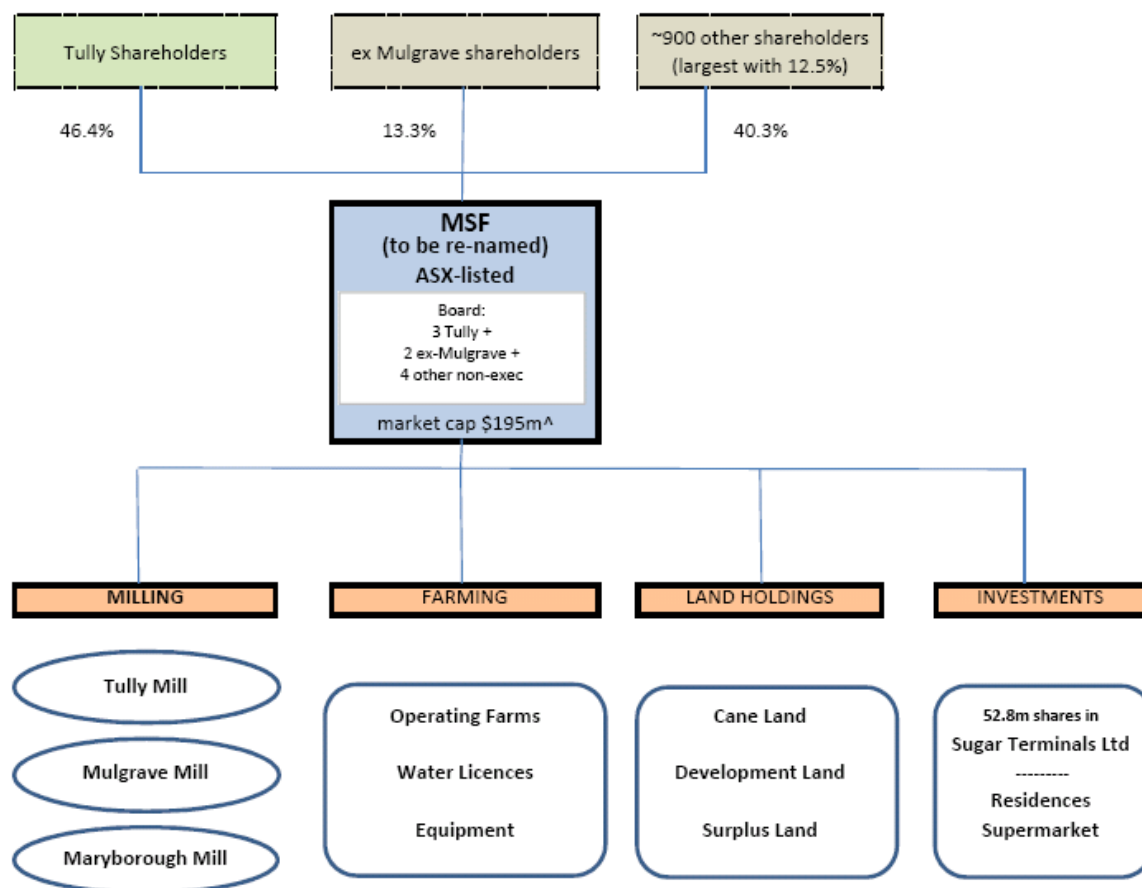
- ✓ OUR OFFER VALUE IS **\$29.25<sup>^</sup>** PER TULLY SHARE
- ✓ TULLY SHAREHOLDERS WOULD OWN APPROXIMATELY **46.4%** OF THE ASX-LISTED MERGED GROUP\*
- ✓ IF THE OFFER IS SUCCESSFUL, ACCEPTING TULLY SHAREHOLDERS WILL RECEIVE **ASX-LISTED** MSF SHARES IN EXCHANGE FOR THEIR UNLISTED TULLY SHARES
- ✓ IF THE OFFER IS SUCCESSFUL, ACCEPTING TULLY SHAREHOLDERS WOULD HAVE THE **CHOICE** TO HOLD OR SELL THE MSF SHARES RECEIVED UNDER THE OFFER
- ✓ IF MSF ACQUIRES 80% OR MORE OF TULLY SHARES, **CAPITAL GAINS TAX ROLL-OVER RELIEF** TO DEFER ANY TAXABLE CAPITAL GAIN WILL BE AVAILABLE TO AUSTRALIAN RESIDENT TULLY SHAREHOLDERS WHO ACCEPT THE OFFER

<sup>^</sup> Based on a share price of \$2.25 per MSF Share, which is the VWAP of MSF Shares for the 20 trading days prior to the date of this Bidder's Statement (refer to page 15 for more information). The ^ symbol used in this Bidder's Statement has a consistent meaning.

\* Assumes MSF acquires 100% of Tully Shares, the number of MSF Shares on issue does not materially change from its current level (excluding shares issued under the Offer) and there are no material acquisitions or disposals of MSF Shares.

## What the Merged Group structure would look like

*“An established ASX-listed sugar company, majority owned by current and former cane growers\* and having the resources and access to capital to prudently support consolidation of milling assets in Far North Queensland.”*  
*(James Jackson, Chairman of MSF)*



**Note:** In the above diagram, shareholding percentages are approximate and assume that MSF acquires 100% of Tully Shares, the number of MSF Shares on issue does not materially change from its current level (excluding shares issued under the Offer), and there are no material acquisitions or disposals of MSF Shares.

\* Assumes MSF acquires 100% of Tully Shares, the number of MSF Shares on issue does not materially change from its current level (excluding shares issued under the Offer) and there are no material acquisitions or disposals of MSF Shares.

## Chairman's Letter

7 October 2009

Dear Tully Shareholder

We are pleased to provide you with our merger offer proposal. As you may be aware, MSF proposed a merger to the Tully Board in late 2008 and again in mid 2009. Whilst we are disappointed that the Tully Board has chosen not to formally engage with us yet, MSF remains strongly of the view that Tully Shareholders should have an opportunity to hear what MSF has to offer. The enclosed Bidder's Statement sets out the terms of MSF's Offer. We continue to remain open to hearing from the Tully Board in regard to our Offer.

Our Offer is 13 ASX-listed MSF Shares for each of your Tully Shares.

This Offer provides Tully Shareholders with the following:

- an offer value of \$29.25<sup>^</sup> per Tully Share;
- an aggregate holding by Tully Shareholders of approximately 46.4% of the Merged Group<sup>€</sup>;
- if the Offer is successful, accepting Tully Shareholders will receive ASX-listed MSF Shares in exchange for their unlisted Tully Shares;
- if the Offer is successful, accepting Tully Shareholders would have the choice to hold the MSF Shares received under the Offer, or sell all or part of them to provide them with capital for their farms, investments, or other purposes; AND
- if MSF acquires 80% or more of Tully Shares, capital gains tax roll-over relief to defer any taxable capital gain will be available to Australian resident Tully Shareholders who accept the Offer.

Tully is an unlisted company. MSF is listed on the ASX. The ASX provides a well recognised trading platform to facilitate the trading of shares. Shares listed on the ASX are typically more liquid than shares listed on other exchanges and shares of unlisted companies. Accordingly, trading prices for shares in unlisted companies may include a liquidity discount. MSF understands that, notwithstanding that Tully is unlisted, Tully Shares do trade from time to time. MSF has requested details of recent Tully Share trading prices from the Tully Board, but has been advised that Tully is unwilling to provide that information.

We are calling the MSF Offer a merger proposal because if it succeeds:

- Tully Shareholders would own approximately 46.4% of the ASX-listed Merged Group and be by far the largest shareholder group<sup>€</sup>;

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<sup>€</sup> Assumes MSF acquires 100% of Tully Shares, the number of MSF Shares on issue does not materially change from its current level (excluding shares issued under the Offer) and there are no material acquisitions or disposals of MSF Shares.

- Tully would be invited to nominate 3 people to join the Merged Group Board – the board of 9 would comprise 3 Tully, 2 former Mulgrave and 4 other non-executive directors; and
- the new Merged Group Board would propose a new name for the Merged Group for shareholders to consider; one that best reflects the focus and diversity of the Merged Group.

MSF believes strongly that the strategic rationale of combining our two companies is compelling, and that the potential growth opportunity for Tully from the merger is much greater than for Tully as a stand-alone entity.

The merger of Tully with MSF would create a much larger enterprise in terms of market capitalisation, crushing capacity and raw sugar production. The key features of the Merged Group would include the following:

- An established ASX-listed company focussed on the sugar industry and known in the financial and investment markets.
- Improved access to capital for further investment in milling and farming and further prudent consolidation of milling assets in Far North Queensland.
- A robust governance and management regime.
- A strong board with an appropriate mix of grower, industry and ASX-listed company skills and experience.
- Significant skills and operating experience along the entire sugar supply chain from growing, transport and milling to raw sugar marketing, pricing, shipping and logistics.
- Direct domestic and international raw sugar customer relationships.
- Operating skills and experience in land and property ownership and development which would complement Tully's long-established skills and capabilities in low-cost mill management and production.
- Scale and diversity from three mills with an aggregate annual crushing capacity of some 5 million tonnes, raw sugar production of over 500,000 tonnes, annual cane production from company farms of approximately 250,000 tonnes, water licences for over 7,500 megalitres, substantial development land and other investment assets.
- Conservative borrowings – the Merged Group would have net pro-forma interest-bearing debt of some \$43 million compared to total assets of some \$321 million, including investments of some \$47 million in STL and investment property. See section 5.2 of this Bidder's Statement for further details.

A side-by-side profile of the balance sheets of MSF and Tully and pro-forma Merged Group balance sheet are set out in section 5 of the Bidder's Statement, and this provides a useful snapshot of what the Merged Group asset base would look like. Some other key statistics are shown in the table below.

	MSF	Tully
<b>Milling assets</b>		
Maximum historical crush	2.5 mt	2.4 mt
Average crush, past five years	1.89 mt	2.03 mt
Average raw sugar production, past five years	254 kt	264 kt
<b>Cane farming land</b>	5,800 ha	1,000 ha
<b>Water licences</b>	7,500 ml	nil
<b>STL Shares</b>	46.2m	6.5m
<b>Other assets</b>	Development land	Residences, supermarket and other land

\* All figures in the above table are approximate only.

In a media release dated 22 September 2009, the Tully Board stated that it “*believed [Tully] had the potential to create more value for its shareholders, growers and the community as an independent business, than [MSF] was offering*”.

The fact is that the MSF Offer is available **immediately** to Tully Shareholders and, we believe, provides a fair value for your Tully Shares.

In the media release, the Tully Board said it was “*actively pursuing growth opportunities independent of the MSF offer*” and that “*Tully’s growth opportunities include expansion of cane supply in 2011 and beyond with an additional 250,000 tonnes of cane from the Kennedy/ Murray Upper regions*”. The fact is that Tully has lost cane supply over recent years. **Cane crushed** at the Tully mill has declined markedly – from an average of 2.293mt over the 2003-2005 seasons to an average of 1.839mt over the 2006-2008 seasons. Further, we note that the area harvested has fallen over the last four seasons from 24,843ha to 22,711ha.

Tully could acquire other mills in Far North Queensland, notwithstanding the considerable execution and financial risk attached to such activity. However, this would again not provide any solution to the possible objectives of Tully Shareholders. The Tully 2009 Annual Report (page 5) stated “*In reviewing the strategic direction of [Tully], we have identified a number of possible objectives for shareholders ranging from ‘staying as we are’ to ‘listing on the ASX to maximise value and provide liquidity and an exit mechanism from [Tully]’*”.

The MSF merger offer provides both the corporate scale and capacity to effect the consolidation of milling assets in Far North Queensland in a prudent manner. Upon successful completion, it would provide accepting Tully Shareholders with ASX-listed MSF Shares in exchange for their unlisted Tully Shares. Tully Shareholders will then have the opportunity, at their choice, to sell all or part of their MSF Shares or to continue to hold their MSF Shares and be a shareholder in a larger more diverse ASX-listed sugar group.

The Tully 2009 Annual Report notes that Tully’s brokers, BBY, provided a market valuation of the operating business and underlying assets of Tully for the purposes of assessing a possible listing on the ASX. This was presented to the investor community, both in southern states and overseas, however, Tully did not proceed with an ASX-listing.



As has been previously communicated to the Tully Board, we respect the qualities and heritage of the Tully mill, and will keep its head-quarters in Tully (see section 4 of this Bidder's Statement for more information), and we know that both our companies support consolidation and rationalisation of milling assets in Far North Queensland.

We are committed to the future milling operations of Tully, including where appropriate further capital investment if required, and we believe further revenues can be developed for the benefit of all stakeholders of the Merged Group.

Importantly, MSF has demonstrated that it has the ability to appropriately manage corporate merger transactions and execute on other growth and diversification initiatives. MSF merged with Mulgrave in 2008 and former Mulgrave shareholders remain as a significant shareholder group, and two Mulgrave nominated directors, Jim Hesp and Brett Moller, are on the MSF Board. We believe that the Mulgrave merger and integration has been positive for all concerned.

There are many other aspects of the Offer which should be considered, and these are set out within this Bidder's Statement.

I am now pleased to enclose the Offer to acquire all of your Tully Shares and provide you with important information about MSF and the Merged Group to assist you with your decision.

I encourage you to read the Bidder's Statement carefully and to accept the Offer.

The MSF Board looks forward to welcoming you as a new shareholder of MSF so that you may participate in the value creating opportunities of the Merged Group going forward.

Yours faithfully

A handwritten signature in black ink, appearing to read 'James Jackson', with a stylized, flowing script.

**James Jackson**  
Chairman

## Why you should accept the Offer

The key reasons why Tully Shareholders should accept the Offer are set out in this section. You are encouraged to read this Bidder's Statement in full before making a final decision whether or not to accept the Offer.

The MSF Board believes there are numerous benefits of the Offer for Tully and Tully Shareholders.

Tully Shareholders will retain a significant interest in the underlying Tully assets and business prospects, via their ongoing shareholding in the Merged Group, and will also enjoy the following benefits:

<b>Liquidity for Tully Shares</b>	Tully Shareholders will receive readily tradeable ASX-listed MSF Shares.
<b>Value</b>	Based on MSF's VWAP for the 20 trading days prior to the date of this Bidder's Statement, the implied value of MSF's Offer is \$29.25 per Tully Share. Refer to page 15 of this Bidder's Statement for more information.
<b>Clear valuation</b>	The Offer provides a clear valuation for Tully based on the value of the ASX-listed MSF Shares.
<b>Shareholder representation</b>	Tully Shareholders will collectively comprise the largest shareholder group in the Merged Group, holding approximately 46%. <sup>€</sup>
<b>Dividend stream</b>	In recent years, the MSF Board has aimed to pay dividends of up to 50% of profit from ordinary activities after tax. Any future dividends are dependent upon MSF's earnings, financial condition, financial arrangements, financing requirements for future growth, and other factors that the MSF Board may deem relevant in the circumstances.
<b>Board representation</b>	If the Offer is successful and MSF acquires 80% or more of Tully Shares, MSF intends to invite the Tully Board to nominate three people to become directors on the Merged Group Board. MSF will also seek to retain key members of the Tully executive management team.
<b>Board understands issues</b>	The MSF Board understands key issues facing Australian mills. Issues such as the need to expand cane supply, combating the encroachment of timber schemes, the need to take advantage of forward pricing opportunities for growers, co-generation and energy strategies, sugar marketing initiatives, linking transport infrastructure, and investing in mills for the future.
<b>ASX listed entity</b>	Tully Shareholders will have an investment in a known and established Australian ASX-listed sugar company which would have a strong balance sheet and capital raising capability.

<sup>€</sup> Assumes MSF acquires 100% of Tully Shares, the number of MSF Shares on issue does not materially change from its current level (excluding shares issued under the Offer) and there are no material acquisitions or disposals of MSF Shares.

<b>Diversity of operations</b>	Tully Shareholders will have an investment exposure to an enlarged merged company of significant value with activities in diverse growing regions, its own significant cane land holdings (approximately 7,000 hectares), water rights, farming activities and a history of strong grower relationships.
<b>Aggregation of milling assets</b>	If the Offer is successful, there will be an aggregation under common ownership of the Maryborough, Tully and Mulgrave mills and a platform for further industry consolidation and expansion (including mill enhancements and co-generation) in North Queensland.
<b>Savings in future tax payable by Tully</b>	The uplift to tax base of property, plant and equipment upon consolidation will result in increased future tax depreciation deductions and reduce tax payable in future periods. This merger benefit will only eventuate if MSF acquires 100% of Tully and Tully becomes part of the MSF tax consolidation group.
<b>Tax roll-over relief</b>	If MSF acquires ownership of 80% or more of Tully Shares, capital gains tax roll-over relief to defer any taxable capital gain will be available to Australian resident shareholders who accept the Offer.

If you are in any doubt how to deal with this Bidder's Statement or the Offer, you should consult your broker or your legal, financial, taxation or other professional adviser.

If you have any questions in relation to the Offer, please contact the MSF Offer Information Line on 1300 851 394 (toll-free from within Australia) or +61 2 8280 7912 (from outside Australia).

## Frequently asked questions

**You may have questions in relation to the Offer. The following set of questions and answers is intended to assist in your understanding of the Offer. They are qualified by, and should be read in conjunction with, the detailed information contained in this Bidder's Statement and Appendices 1 and 2 to this Bidder's Statement. You should read this Bidder's Statement in full before deciding whether or not to accept the Offer.**

If you have any further questions in relation to the Offer, please contact the MSF Offer Information Line on 1300 851 394 (toll-free from within Australia) or +61 2 8280 7912 (from outside Australia).

Question	Answer
What is the Offer?	<p>MSF is offering to acquire all of your Tully Shares on the Offer Terms set out in Appendix 1 to this Bidder's Statement subject to the Offer Conditions set out in Appendix 2 to this Bidder's Statement.</p> <p>If you accept the Offer, you will receive 13 MSF Shares for each Tully Share you own as at the Register Date.</p>
What is the value of the Offer?	<p>Based on MSF's VWAP for the 20 trading days prior to the date of this Bidder's Statement, the implied value of MSF's Offer is \$29.25 per Tully Share.</p> <p>The implied Offer value will change as a consequence of changes in the market price of MSF Shares from time to time. Refer to page 15 of this Bidder's Statement for more information.</p>
What is this Bidder's Statement?	<p>This Bidder's Statement has been prepared by MSF for distribution to Tully Shareholders. It sets out the terms of MSF's Offer for your Tully Shares and information relevant to your decision whether or not to accept the Offer.</p> <p>This Bidder's Statement is an important document and is required to be prepared by MSF by the Corporations Act. If you are in any doubt as to how to deal with this document, you should consult your financial, legal, taxation or other professional adviser before deciding whether or not to accept the Offer.</p>
Who is MSF?	<p>MSF was established in Maryborough in 1886, and is incorporated in the State of Queensland. MSF has been publicly listed since 1956 and MSF Shares are quoted on the ASX under the code "MSF". MSF is a fully vertically integrated raw sugar producer engaged in the growing and milling of sugar cane and the marketing, pricing and shipping of raw sugar to domestic and international customers.</p> <p>MSF is a large cane grower by Australian standards, with cane land holdings of approximately 5,840 hectares, and owns two sugar mills, namely the Maryborough Sugar Factory and the Mulgrave Central Mill. MSF is also the second largest shareholder in STL, holding over 46 million shares or approximately 12.8% of the issued share capital of STL.</p>

What choices do I have as a Tully Shareholder?	<p>As a Tully Shareholder, you have the following choices with respect to your Tully Shares:</p> <ul style="list-style-type: none"> <li>• accept the Offer for all of your Tully Shares; or</li> <li>• do nothing.</li> </ul>
How do I accept the Offer?	To accept the Offer, you should follow the instructions set out in the "How to accept the Offer" section of this Bidder's Statement and on the enclosed Acceptance Form.
Can I accept the Offer for part of my holding of Tully Shares?	No, the Offer may only be accepted for <b>all</b> of your Tully Shares.
If I accept the Offer, when will I receive the MSF Shares to which I am entitled?	If you validly accept the Offer, you will receive the MSF Shares to which you are entitled within 1 month after the later of receipt of your Acceptance and the date on which the Offer becomes unconditional (and in any event on or before 21 days after the end of the Offer Period).
Are there any Offer Conditions?	<p>Yes, the Offer is subject to a number of Offer Conditions as set out in Appendix 2 to this Bidder's Statement, including:</p> <ul style="list-style-type: none"> <li>• 80% minimum acceptance;</li> <li>• FIRB approval;</li> <li>• amendment of the Tully Constitution;</li> <li>• no action by the ACCC;</li> <li>• no distributions by Tully;</li> <li>• no Tully Shareholder acquiring a relevant interest in the Merged Group of greater than 19.9%; and</li> <li>• no prescribed occurrences.</li> </ul> <p>This is only a summary of the Offer Conditions. The Offer Conditions are set out in full in Appendix 2 to this Bidder's Statement.</p>
What if the Offer Conditions are not satisfied or waived?	<p>If the Offer Conditions are not satisfied or waived before the Offer closes, then the Offer will lapse and your Acceptance will be void.</p> <p>You will continue to hold your Tully Shares and be free to deal with your Tully Shares as if the Offer has not been made, unless you have already sold your Tully Shares to someone else.</p>
What amendment is required to the Tully Constitution?	<p>It is a condition of the Offer that the Tully Constitution be amended so that the restriction (contained in article 2 of the Tully Constitution) that no one person (whether held solely, jointly or with others) may hold more than 600,000 Tully Shares (which equates to approximately 19.4% of all Tully Shares assuming Tully has 3,089,900 Tully Shares on issue) be removed. If this amendment is not made before the end of the Offer Period, MSF will not be able to proceed with the Offer and the Offer will lapse.</p> <p>The Tully Constitution can only be amended if a special resolution is passed at a general meeting of Tully Shareholders. A special resolution is passed if 75% or more of all Tully Shareholders entitled to vote on the resolution vote in favour of</p>

	<p>the resolution.</p> <p>A general meeting of Tully Shareholders may be convened by:</p> <ul style="list-style-type: none"> <li>any director on the Tully Board in accordance with the Tully Constitution; or</li> <li>the directors of Tully on the request of: <ul style="list-style-type: none"> <li>Tully Shareholders with at least 5% of the votes that may be cast at the general meeting; or</li> <li>at least 100 Tully Shareholders who are entitled to vote at the general meeting,</li> </ul> in accordance with the Corporations Act; or</li> <li>Tully Shareholders with at least 5% of the votes that may be cast at a general meeting in accordance with the Corporations Act.</li> </ul> <p>MSF is not able to convene a general meeting of Tully Shareholders. All queries in relation to the convening of a general meeting and the required amendment to the Tully Constitution should be directed to the Tully Board.</p>
Will I need to pay brokerage or stamp duty if I accept the Offer?	No brokerage or stamp duty will be payable by you on acceptance of the Offer (unless you are an Ineligible Foreign Shareholder).
What are the tax consequences of acceptance of the Offer?	<p>A summary of the likely tax consequences of the Offer is set out in section 7 of this Bidder's Statement. However, the tax implications for you will depend on your individual circumstances including the price at which you originally acquired your Tully Shares.</p> <p>If MSF acquires ownership of 80% or more of Tully Shares, capital gains tax roll-over relief to defer any taxable capital gain will be available to Australian resident shareholders who accept the Offer.</p> <p>You should consult your tax, financial or other professional adviser on the tax implications of acceptance of the Offer to take into account your own individual circumstances.</p>
What happens if I do not accept the Offer?	<p>If you do not accept the Offer and MSF acquires a relevant interest in at least 90% of Tully Shares at any time during the Offer Period and the Offer Conditions are satisfied or waived, MSF intends to proceed to compulsorily acquire your Tully Shares in accordance with the compulsory acquisition provisions of the Corporations Act.</p> <p>If this occurs, you will receive your entitlement to MSF Shares at the conclusion of the compulsory acquisition process.</p> <p>If MSF acquires more than 80% but less than 90% (and the other Offer Conditions are either satisfied or waived), you will remain a minority Tully Shareholder until such time as MSF may become entitled to exercise general compulsory acquisition rights under Part 6A.2 of the Corporations Act to compulsorily acquire any outstanding Tully Shares.</p> <p>If MSF acquires less than 80% of Tully Shares, the Offer will lapse unless MSF waives the 80% minimum acceptance condition (and the other Offer Conditions are either satisfied or waived).</p>

Will my MSF Shares be listed on the ASX?	<p>Within 7 days of the date of this Bidder's Statement, MSF will apply to ASX for quotation of the MSF Shares to be issued in conjunction with this Offer on the Official List of the ASX. Quotation of the MSF Shares to be issued under the Offer will depend on ASX exercising its discretion to admit them to the Official List. However, MSF is already admitted to the Official List of the ASX and shares in MSF in the same class or on the same terms as those to be issued under the Offer are already quoted.</p>
What rights will my MSF Shares have?	<p>The MSF Shares issued pursuant to the Offer will be issued fully paid and will from the time of issue rank equally for dividends and other rights with existing MSF Shares.</p>
Is there a cooling-off period or can I withdraw my Acceptance?	<p>There is no cooling-off period.</p> <p>Under the Offer Terms, you can not withdraw your Acceptance unless the Offer Conditions are not satisfied or waived before the Offer closes (in which case the Offer will automatically terminate and your Tully Shares will be returned to you) or a withdrawal right arises under the Corporations Act. Such a withdrawal right will arise if, after you have accepted the Offer, and while the Offer is still subject to the Offer Conditions, MSF varies the Offer in a way that postpones for more than one month the time MSF has to meet its obligations under the Offer.</p>
When does the Offer close?	<p>The Offer is scheduled to close at 6.00pm AEST on 11 December 2009 unless extended or withdrawn.</p>
Can MSF extend the Offer Period?	<p>Yes, the Offer Period can be extended at MSF's discretion in accordance with the Corporations Act. Tully Shareholders will be sent written notice of any extension, and the extension will be announced to the ASX.</p>
What are the significant risks of the Offer?	<p>You should carefully consider the risk factors that could affect the performance of MSF and the Merged Group before deciding whether to accept the Offer.</p> <p>A summary of the key risks is set out in section 8 of this Bidder's Statement.</p>
Where do I get further information?	<p>If you have any further questions in relation to the Offer, please contact the MSF Offer Information Line on 1300 851 394 (toll-free from within Australia) or +61 2 8280 7912 (from outside Australia).</p> <p>If you are in any doubt how to deal with this Offer, you should consult your broker or your legal, financial, taxation or other professional adviser.</p>

## Overview of the Offer

**The following is a summary only of the Offer and is qualified by the detailed information contained in the rest of this Bidder's Statement. You should read this Bidder's Statement in full before deciding how to deal with your Tully Shares.**

The Offer Terms are set out in Appendix 1 and the Offer Conditions are set out in Appendix 2 to this Bidder's Statement.

## What is the Offer value?

As the Offer consideration comprises MSF Shares, the implied value of the Offer consideration will change as a consequence of changes in the market price of MSF Shares, which are tradeable each day on the ASX.

The table below illustrates the value of the Offer consideration and total value of the Offer based on various MSF Share prices. The value of the Offer consideration will fluctuate during the Offer Period with the MSF Share price, so the table below is only a guideline and does not purport to show any minimum or maximum values.

MSF Share price	Total value of Offer	Value of Offer consideration per Tully Share
\$2.35	\$94.4m	\$30.55
\$2.30	\$92.4m	\$29.90
<b>\$2.25</b>	<b>\$90.4m</b>	<b>\$29.25</b>
\$2.20	\$88.4m	\$28.60
\$2.15	\$86.4m	\$27.95

The highlighted figures in the middle of the table reflect the Offer consideration values calculated using the VWAP of MSF Shares in the 20 trading days prior to the date of this Bidder's Statement. Refer to section 2.2 for more information.

## Summary of the Offer Terms and Offer Conditions

### Offer

MSF offers to acquire all of your Tully Shares on the Offer Terms set out in Appendix 1 subject to the Offer Conditions set out in Appendix 2 to this Bidder's Statement. You will receive 13 MSF Shares for every Tully Share acquired from you.

The Offer relates to Tully Shares that exist or will exist as at the Register Date.

If you are a Foreign Shareholder you will not receive MSF Shares (see section 10.3). Persons resident in Australia or New Zealand are not Foreign Shareholders.

### Offer Period

The Offer is scheduled to close at 6.00pm AEST time on 11 December 2009 (but it may be extended).



## Conditions

The Offer is subject to a number of Offer Conditions as set out in Appendix 2 to this Bidder's Statement, including:

- 80% minimum acceptance;
- FIRB approval;
- amendment of the Tully Constitution;
- no action by the ACCC;
- no distributions by Tully;
- no Tully Shareholder acquiring a relevant interest in the Merged Group of greater than 19.9%; and
- no prescribed occurrences.

The Offer is also subject to a statutory condition required by section 625(3) of the Corporations Act (see clause 4 of the Offer Terms).

This is only a summary of the Offer Conditions. The Offer Conditions are set out in full in Appendix 2 to this Bidder's Statement.

If the Offer Conditions are not satisfied or waived then the Offer will not proceed.

## How to accept the Offer?

The Offer may only be accepted for all of your Tully Shares. Acceptances for the Offer must be received before the close of the Offer Period, which is 6.00pm (AEST) on 11 December 2009 (unless extended). To accept the Offer you should complete the Acceptance Form and mail or deliver it following the instructions set out below.

The postal and delivery addresses for completed Acceptance Forms are as follows.

The postal address is:

Link Market Services Limited  
Tully Sugar Limited Offer  
Locked Bag A14  
SYDNEY SOUTH NSW 1235

If you are a Tully Shareholder within Australia, a reply paid envelope is enclosed for your convenience. The transmission of the Acceptance Form and other documents is at your own risk.

You may deliver the Acceptance Form and any associated documents in person to:

Link Market Services Limited  
Tully Sugar Limited Offer  
Level 12, 680 George Street  
SYDNEY NSW 2000

For full details see clause 5 of the Offer Terms in Appendix 1 to this Bidder's Statement.

## **What will the tax consequences be?**

Section 7 of this Bidder's Statement describes the major tax implications for Tully Shareholders who accept the Offer and are resident in Australia. Amongst other things, section 7 discusses the capital gains tax rollover relief that Australian resident Tully Shareholders will be eligible for if more than 80% of the Tully Shares are acquired under the Offer.

## **Distributions**

MSF Shares issued as consideration under the Offer will rank equally for distributions in respect of periods commencing on or after the date of issue.

## **Do I pay brokerage or stamp duty if I accept?**

You will not pay brokerage or stamp duty on the disposal of your Tully Shares if you accept the Offer. If you are a Foreign Shareholder, brokerage will be payable in respect of the MSF Shares sold under the nominee facility (see section 10.3 of this Bidder's Statement).

## **Further information**

If you are in any doubt about how to deal with this Bidder's Statement, you should consult your broker or your legal, financial, taxation or other professional adviser.

If you have any questions in relation to this Bidder's Statement, the Offer or how to accept it, or if you have lost your Acceptance Form and require a replacement, please call the MSF Offer Information Line on 1300 851 394 (toll-free within Australia) or +61 2 8280 7912 (from outside Australia).

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# **1 Profile of MSF**

## **1.1 Overview of MSF**

MSF is principally involved in the farming of sugar cane and the manufacture of raw sugar.

MSF began in 1886 as a juice mill in the Island Plantation area, but following major flooding in 1893 the mill was relocated to today's site and upgraded to produce raw sugar, with production starting in 1895.

In 1956, MSF became listed on the ASX as a public company, incorporated and domiciled in Australia. MSF has a current market capitalisation of approximately \$105 million with over 1,200 shareholders.

Over time, the Maryborough district has increased its seasonal throughput significantly from 15,000 tonnes per year (1896) reaching a peak of 985,000 tonnes in the 2006 season. The average annual crush over the past five seasons has been 772,792 tonnes.

MSF's Maryborough Mill produces "Brand QHP" sugar which is directly sold to Sugar Australia's Yarraville refinery.

In 2008, MSF acquired Mulgrave, the owner of the Mulgrave sugar mill located 20km south of Cairns which processes approximately 1.1 million tonnes of cane per year with an historical seasonal high of approximately 1.5 million tonnes. Mulgrave produces "Brand 1" and "JA" sugar which is sold directly into South-East Asian markets.

Also in 2008, MSF acquired 19,151,771 STL Shares following the purchase of Anthoan Pty Ltd. MSF currently owns 34,455,836 STL G class shares and 11,775,965 STL M class shares which represents approximately 12.84% of all STL Shares on issue.

MSF is the largest holder of cane farm land in the Maryborough region. MSF owns approximately 5,840 hectares of cane farm land and approximately 7,500 megalitres of water rights.

## **1.2 Principal activities**

MSF's principal business activities consist of growing sugar cane on land predominantly owned and farmed in the Maryborough region and a cane farm in the Babinda region and the manufacturing of raw sugar from its two sugar mills. As described above, MSF also has an investment in STL.

In conjunction with these activities, MSF produces molasses and generates electricity (which is supplied to the Queensland State power grid).

In the 2008 cane season, the Maryborough and Mulgrave mills combined processed approximately 1.7 million tonnes of sugar cane, producing approximately 241,137 tonnes of raw sugar. Approximately 165,199 tonnes of sugar cane were delivered from MSF's company-owned farms in south-east and north Queensland including approximately 88,301 tonnes of cane harvested from land owned by MSF and leased to growers in the Maryborough region.

For the 2009 season, MSF has also agreed to purchase approximately 20,000 tonnes of cane from growers in the Nambour region, on the Sunshine Coast.

For the financial year ending 30 June 2009, the 46 million STL Shares owned by MSF resulted in approximately \$3.6 million in fully franked dividends being received.

### **1.3 Strategy and objectives**

MSF's core strategy is to have an integrated sugar business from farm to market. To achieve this, MSF's objectives are to:

- continue to invest in cane farming operations;
- operate globally cost competitive sugar mills;
- produce sugar of a high quality to meet customer requirements;
- participate in regional industry investment in terminal facilities resulting in cost competitive storage and handling arrangements for industry participants and optimal utilisation of these facilities;
- develop business relationships with regional industry participants that will benefit MSF, its suppliers and customers; and
- be a significant contributor to the renewable energy requirements into the future.

### **1.4 Financial performance**

Financial information relating to MSF is set out in section 5 of this Bidder's Statement.

### **1.5 Merger experience**

On 3 July 2008, MSF acquired Mulgrave. The integration of the two companies has progressed well with a number of notable outcomes achieved to date including:

- the negotiation of a new cane supply agreement with Mulgrave growers to allow for long term sugar pricing out to the 2012 season, shortly to be extended to the 2013 season. There were no other significant changes to the cane supply agreement. There were some increases in allowances paid to growers;
- operations at the Mulgrave mill have been business as usual with investment in maintenance and capital since the acquisition resulting in the Mulgrave mill continuing to operate with very low factory stoppages and producing excellent sugar recoveries;
- low employee turnover and stronger focus on safety performance; and
- the enlarged group has benefitted from the respective strengths of the two organisations.

### **1.6 Corporate governance**

MSF is committed to achieving and demonstrating the highest standards of corporate governance.

MSF's corporate governance statement sets out:

- the corporate governance principles under which the MSF Board acts;
- the manner in which the MSF's Board's performance is reviewed; and
- the MSF Board charter and the charters of the MSF Board's committees.

The ASX Principles of Good Corporate Governance, which are the benchmark standard to which MSF bases its corporate governance practices, define "Corporate Governance" as follows:

*"Corporate Governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised. Good corporate governance structures encourage companies to create value (through entrepreneurship, innovation, development and exploration) and provide accountability and control systems commensurate with the risks involved."*

The relationship between the MSF Board and executive management is important to MSF's long term success. The MSF Directors are responsible to MSF Shareholders for the performance of MSF in both the short and the longer term and seek to balance sometimes competing objectives in the best interests of MSF as a whole. Their focus is to enhance the interests of MSF's Shareholders and other key stakeholders (including growers) and to ensure MSF is properly managed.

Day to day management of MSF's affairs and the implementation of MSF's corporate strategy and policy initiatives are formally delegated by the MSF Board to MSF's CEO and senior executives. These delegations are reviewed on an annual basis.

## 1.7 Board of Directors

### **James Jackson**

Chairman, B Com (UQ), FAICD  
Independent non-executive director  
Age: 47

Appointed as a director in June 2004 and chairman on 1 August 2008, Mr Jackson has significant experience in stockbroking and investment banking in New York, London and Australia, with SG Warburg & Co Inc, Potter Warburg and JB Were and Son. He completed the Program for Management Development at the Harvard Business School in 1995. He has detailed commercial and investment experience. He held the position of non-executive director of North Pine Motors Pty Ltd (1994-1997). He also sits on the management committee of Richmond Landcare Inc, a community based Landcare network organisation. Mr Jackson's skills and expertise relevant to the position of director are financial and strategic analysis, agribusiness, capital markets expertise and network and corporate governance.

### **John Burman**

BE (Hons I) (UNSW), PhD (London), GAICD  
Independent non-executive director  
Age: 62

Dr Burman was appointed a director in June 2005. Dr Burman, a chemical engineer, has held the positions of Chief Executive Officer of Sugar Australia Pty Ltd and Managing Director of NZ Sugar Company Limited. He was a director of subsidiaries of these two companies and of company superannuation funds in New Zealand. He has 35 years experience in the Australian and New Zealand raw and refined sugar industries (in general management, manufacturing, research and development and export marketing). Dr Burman's key skills and expertise are in the areas of science and other technical aspects of the sugar industry, marketing, risk management, general management and compliance.

**Ross Burney**

B Econ

Non-executive director

Age: 38

Mr Burney was appointed a director in February 2006. He initially trained as an accountant with BDO in Sydney before joining Brierley Investments Limited in 1994. Since 2000, Mr Burney has been the investment manager at Guinness Peat Group plc ("GPG"). Since then he has worked in GPG's United Kingdom and Australian offices, sitting on the boards of various investee companies including Dawson International plc, and is currently a board member of Turner and Growers in New Zealand and Peanut Company of Australia. Mr Burney's key skills and expertise are in the areas of accounting, investment management and corporate finance.

**Jim Hesp**

FAICD

Independent non-executive director

Age: 69

Mr Hesp was appointed a director in July 2008. Mr Hesp became a director of The Mulgrave Central Mill Company Limited in 1994 and was appointed Chairman of that board in 2003. He is currently Chairman of Northern Sugar Manufacturers' Association, a director of Australian Sugar Milling Council and Sugar North Limited. He is also a director of Sugar Terminals Limited. A grower for over 50 years, Mr Hesp owns substantial sugar cane growing interests in the Mulgrave and Burdekin regions. He has also been a long term participant in the cane harvesting sector having been prominent in the introduction of green cane harvesting to the Australian sugar industry.

**Sue Palmer**

B Com (UQ), CA, FAICD

Independent non-executive director

Age: 52

Ms Palmer was appointed a director in April 2008. Ms Palmer, a Chartered Accountant, is currently General Manager, Business Performance for Leighton Contractors. She has almost 30 years' experience in organisations including commercial, accounting and IT roles at CS Energy, Incitec and PricewaterhouseCoopers. Ms Palmer also brings considerable experience having been a director of the Port of Brisbane Corporation for almost five years and previous experience including Deputy Chair of the Queensland Competition Authority and a director of the Royal Blind Foundation.

**Brett Moller**

BA (ANU), LLB (QUT), MAICD

Independent non-executive director  
Age: 47

Mr Moller was appointed a director in July 2008. Mr Moller served as a director and Deputy Chairman of The Mulgrave Central Mill Company Limited and was Chairman of its Audit Committee at the time of that company's acquisition by The Maryborough Sugar Factory Limited. He was a member of the Mulgrave Board that made the decision to step outside the Queensland single desk arrangements in respect to raw sugar marketing in 2006 and went and established its own customer relations and has successfully marketed and sold its own sugar and that of the Mossman Sugar Mill since that time. He is a partner in the Far North Queensland regional law firm Marino Moller Lawyers, having been admitted as a solicitor in 1991. Mr Moller holds interests in sugar cane farms in the Mulgrave Mill areas south of Cairns.

## **1.8 Directors interests**

Except as disclosed in this Bidder's Statement, no MSF Director or proposed director of MSF (whether individually or in consequence of the director's association with any company or firm or in any material contract entered into by MSF) has now or has had in the two year period ending on the date of this Bidder's Statement, any interest in:

- the formation or promotion of MSF;
- property acquired or to be acquired by MSF in connection with its formation or promotion or the Offer; or
- the Offer of MSF Shares.

Except as disclosed in this Bidder's Statement, no amount of any kind (whether in cash or shares or otherwise) has been paid or agreed to be paid to any MSF Director or proposed director or to any company or firm with which a MSF Director is associated to induce him or her to become, or to qualify as, a MSF Director, or otherwise for services rendered by him or her or any company or firm with which the MSF Director is associated in connection with the promotion or formation of MSF or this Offer.

## **1.9 Interests in MSF Shares**

The table below shows the interests of the MSF Directors in MSF Shares at the date of this Bidder's Statement and the number of MSF Shares which the MSF Directors are expected to hold directly or indirectly following completion of the Offer assuming 100% acceptance.



MSF Director name	Number of MSF Shares held prior to Offer	Approximate % of MSF Shares held prior to Offer <sup>2</sup>	Expected number of MSF Shares held immediately following completion of the Offer	Expected approximate % of MSF Shares held immediately following completion of the Offer <sup>2</sup>
James Jackson	840,000 <sup>1</sup>	1.81%	840,000 <sup>1</sup>	0.97%
John Burman	5,000	0.01%	5,000	0.01%
Ross Burney <sup>3</sup>	Nil	0.00%	Nil	0.00%
James Hesp	321,702 <sup>1</sup>	0.69%	321,702 <sup>1</sup>	0.37%
Susan Palmer	Nil	0.00%	Nil	0.00%
Brett Moller	71,151	0.15%	71,151	0.08%

**Notes to table:**

1 Held directly and indirectly.

2 Percentage calculated on the total number of MSF Shares, excluding options.

3 While Ross Burney does not hold any MSF Shares individually or in a related body corporate, he is an employee of GPG which holds 10,711,310 MSF Shares. Ross Burney does not have a controlling interest in GPG.

## 1.10 Senior management

MSF's executive management team develops and implements corporate strategy and undertakes reviews of each business unit. It is particularly focused on strategy development and review, acquisition protocols and management, and promotion of future growth. The team's responsibilities also include risk management and investor relations. MSF's executive management team comprises:

### **Mike Barry - Chief Executive Officer**

BBus (Management), MBA

Age: 46

Mr Barry was appointed to the position of CEO in February 2007. He was previously managing director of the private equity-owned Hudson Building Supplies, one of Australia's largest building supply companies. For the ten years prior to holding that position, Mr Barry held a number of senior management roles within Boral Limited, the most recent being Regional General Manager for Boral's Construction Materials business in Western Australia and South Australia, where he had responsibility for the company's concrete, quarries, transport, pre-cast concrete, asphalt and mining activities in those regions.

### **Wayne Massey – Chief Financial Officer**

B Com, CPA

Age: 44

Mr Massey was appointed Chief Financial Officer in 2008 following the acquisition of Mulgrave. Prior to this he was Company Secretary and Chief

Financial Officer of The Mulgrave Central Mill Company Limited from 1998 to 2008. He was employed by CSR in financial roles from 1987 to 1998.

**Greg Clarey - Company Secretary**

BBus (Accounting), CPA

Age: 59

Mr Clarey joined MSF in 1987 and was appointed to the position of company secretary in 1988. He has 26 years experience in the Australian sugar industry as well as previous experience in manufacturing and public accounting.

**Glen Crimmins – Group Manager – Market Risk**

BSc (Rural Management)

Age: 45

Prior to joining MSF in 2005, Mr Crimmins held a similar position with a well known Australian agribusiness company for approximately 12 years. His primary responsibilities during that time included agricultural commodity marketing and related value-adding initiatives.

**Trevor Crook - Agriproducts Supply Manager**

BSc (Rural Technology), MBA

Age: 42

Mr Crook joined MSF in 2005. He has 14 years' experience in the cane supply logistics and agricultural sectors of the Australian sugar industry including eight years at Mulgrave where he advanced to the position of Cane Supply manager.

**Peter Flanders - General Manager - Mulgrave**

B Eng (Mech), MBT

Age: 45

Mr Flanders joined Mulgrave mill in July 2008 as the Engineering Manager and was appointed General Manager in February 2009. He has had 24 years experience in the Australian Sugar Industry in both the raw sugar manufacturing and sugar refining sectors in various engineering and operations management roles.

**Dennis Kaye - Property Manager**

LLB, MBA, FAP

Age: 62

Mr Kaye joined MSF in 2006. He is a qualified valuer and is a Fellow of the Australian Property Institute. Mr Kaye has 30 years experience in the property industry. He was previously Head of Property at AGL for 12 years.

**Brian Mahony - General Manager – Sales and Marketing**

BBus (Accounting), MNIA

Age: 52

Mr Mahony joined Mulgrave Central Mill in 2001. He has over 30 years experience in the Australian Sugar Industry including the last 17 years in export marketing and price risk management.

**Stewart Norton - General Manager - Maryborough mill**

B Eng (Chem)

Age: 47

Mr Norton joined MSF in 1999. He has over 20 years experience in the Australian Sugar Industry, and prior to joining MSF was Production Superintendent at CSR's Plane Creek Mill for five years.

#### **1.11 Publicly available information**

MSF is a company listed on ASX and subject to the continuous and periodic disclosure requirements of ASX and the Corporations Act. A substantial amount of information is publicly available concerning MSF and may be accessed by referring to the ASX website at [www.asx.com.au](http://www.asx.com.au) (ASX code: MSF) or at MSF's website at [www.marysug.com.au](http://www.marysug.com.au).

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## **2 Information about MSF Shares**

### **2.1 MSF issued securities**

#### **MSF Shares**

As at the date of this Bidder's Statement, MSF had 46,493,419 fully paid ordinary shares on issue. None of these shares are restricted securities (within the meaning of the ASX Listing Rules) or otherwise subject to escrow.

The rights attaching to MSF Shares are summarised in section 9 of this Bidder's Statement.

#### **Unlisted MSF Options**

As at the date of this Bidder's Statement, MSF has 1,584,420 Unlisted MSF Options on issue.

### **2.2 Trading of MSF Shares**

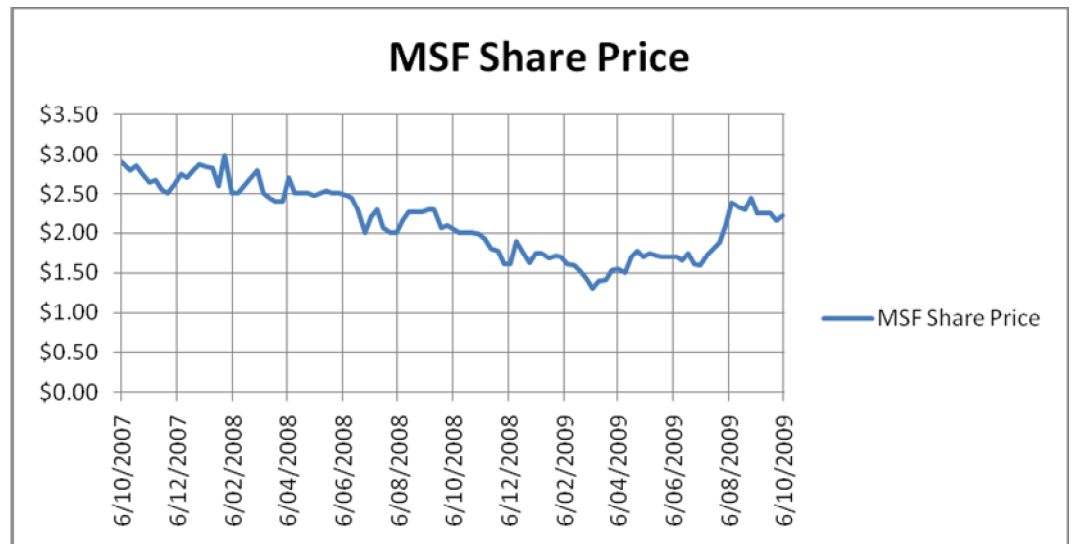
The highest recorded sale price of MSF Shares on ASX ending four months before the public announcement of the Offer was \$2.50. The lowest recorded sale price of MSF Shares in the four months before the public announcement of the Offer was \$1.55.

The highest recorded sale price of MSF Shares on ASX in the four months before this Bidder's Statement was lodged with ASIC was \$2.50. The lowest recorded sale price of MSF Shares on ASX in the four months before this Bidder's Statement was lodged with ASIC was \$1.55.

In this document a price of MSF Shares of \$2.25 has been used, consistent with its VWAP for the 20 trading days prior to the date of this Bidder's Statement.

The closing price at which MSF Shares traded on 26 August 2009, being the last trading day before the public announcement of the Offer, was \$2.20. The closing price at which MSF Shares traded on the day before the date of this Bidder's Statement (being the closing price on ASX on 6 October 2009) was \$2.22.

The following graph sets out the share price of MSF Shares on ASX for the 24 months ended 6 October 2009.



Source: TradingRoom.com

## 2.3 Dividends

In recent years the MSF Board has aimed to pay dividends of up to 50% of profit from ordinary activities after tax.

MSF's franking account balance at 30 June 2009 was \$3.9 million (sufficient to frank dividends at 100% of \$9.1 million).

Any future dividends are dependent upon MSF's earnings, financial condition, financial arrangements, financing requirements for future growth, and other factors that the MSF Board may deem relevant in the circumstances.

## 2.4 Rights attaching to the MSF Shares offered

The MSF Shares to be issued under the Offer are fully paid ordinary shares and will rank equally in all respects with MSF's fully paid ordinary shares then on issue.

A summary of the key rights attaching to MSF Shares is set out in section 9 of this Bidder's Statement.

Set out in sections 2.5, 2.6 and 2.7 of this Bidder's Statement is a summary of each of MSF's dividend reinvestment plan, employee share plan and employee options and performance rights plan respectively. These summaries do not purport to be exhaustive or to constitute a definitive statement of the rights and liabilities under those plans.

## 2.5 MSF dividend reinvestment plan

MSF's Dividend Reinvestment Plan ("DRP") allows MSF Shareholders who reside in Australia to reinvest all or part of their cash dividends in new MSF Shares.

Participation in the DRP is optional and MSF Shareholders may elect to participate in relation to all or part of their shareholding. Participants receive MSF Shares in lieu of all or part of their declared cash dividend. If a MSF Shareholder elects to participate in relation to part of their shareholding, the balance of the dividend due to them will be paid in cash. The MSF Board may,

in its discretion, accept or reject an MSF Shareholder's application to participate in the DRP.

Under the DRP, the issue price of the MSF Shares is based on a discount on the weighted average price of MSF Shares sold ex-dividend on the ASX during the five trading days prior to and including the record date for the dividend. The amount of the discount is at the discretion of the MSF Board. Participants are not charged any brokerage, commission or other transaction costs for the MSF Shares issued under the DRP. If MSF is required to deduct withholding tax from the dividend or any other amount which MSF must retain in relation to the dividend, these amounts will be deducted from the dividend and the balance will be applied in subscribing for MSF Shares.

All MSF Shares issued under the DRP rank equally with existing MSF Shares. Participants may vary or terminate their participation in the DRP by notifying MSF. MSF may alter, suspend or terminate the DRP at any time.

## **2.6 Employee Share Plans**

MSF's Employee Share Plan ("ESP") works on the basis of a value of MSF's Shares being allocated to eligible employees invited to participate at the discretion of the MSF Board.

Interest free loans are provided to participating staff members to pay for the MSF Shares issued under the ESP. MSF Shares issued to a staff member under the ESP are fully owned by the staff member but are held on trust by M.S.F. Investments Pty. Ltd, a wholly-owned subsidiary of MSF.

The loan is repaid from the share dividends. MSF Shares issued under the ESP are issued at a discount of 5% to the previous week's VWAP.

There is a three year vesting period on MSF Shares issued under the ESP. If a participating staff member leaves within that period, they must repay the loan or the shares are forfeited.

Full details of the ESP are outlined in the corresponding trust deed and offer document which can be obtained from MSF by contacting MSF's Company Secretary on (07) 4121 1100.

## **2.7 Employee Options and Performance Rights Plan**

MSF's Options and Performance Rights Plan ("OPRP") was approved by MSF Shareholders at MSF's 2005 annual general meeting. Members of MSF's executive staff are the only employees eligible to participate in the OPRP.

The OPRP is designed to provide long-term incentives for executives to deliver long-term shareholder returns. Under the OPRP, participants are granted options which only vest if certain performance criteria are met and the employees remain employed by MSF at the end of the vesting period.

Participation in the plan is at the discretion of the MSF Board.

Except with the written consent of the MSF Board, the Unlisted MSF Options are not transferable in whole or in part, and may not be exercised by any person other than the Unlisted MSF Option holder.

Upon the valid exercise of an Unlisted MSF Option and payment of the relevant exercise price, MSF will issue one MSF Share, which will rank equally in all

respects with all other MSF Shares then on issue. The holder of the Unlisted MSF Options will be permitted to participate in new issues of securities of MSF upon the prior exercise of the Unlisted MSF Options.

MSF does not intend to apply for listing of the Unlisted MSF Options on the ASX, however it is anticipated that MSF Shares issued upon exercise of the Unlisted MSF Options will be listed on the ASX. If there is a bonus issue to the holders of MSF Shares, the number of MSF Shares over which the Unlisted MSF Options are exercisable will be increased by the number of MSF Shares which the holder of the Unlisted MSF Option would have received if the Unlisted MSF Option had been exercised before the record date for the bonus issue.

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## **3 Information on Tully**

### **3.1 Disclaimer**

The following information on Tully has been prepared by MSF using publicly available information, and has not been independently verified. No material information has been provided to MSF by Tully. Accordingly, MSF does not, subject to the Corporations Act, make any representation or warranty, express or implied, as to the accuracy or completeness of this information.

The information on Tully in this Bidder's Statement should not be considered comprehensive.

In addition, the Corporations Act requires the directors of Tully to provide a Target's Statement to Tully Shareholders in response to this Bidder's Statement, setting out certain material information concerning Tully.

### **3.2 Overview of Tully and its principal activities**

Sugar milling at Tully commenced in 1925 and the mill is headquartered in Tully in northern Queensland. Originally a growers' co-operative, Tully in 1990 transformed to a corporate structure owned by its cane suppliers. Tully's average annual crush over the past five seasons has been approximately 2 million tonnes. There are approximately 580 shareholders on Tully's share register.

Tully is engaged in the milling of sugar cane and manufacture of raw sugar and molasses. Tully is also a shareholder in STL, holding approximately 6.5 million STL Shares.\*

*\* Source: STL 2009 Annual Report*

### **3.3 Publicly available information**

Tully is a public un-listed company which is not subject to the continuous disclosure requirements of the ASX Listing Rules. Tully is subject to the reporting requirements contained in the Corporations Act and does file annual reports.

### **3.4 Tully securities on issue**

The total number of securities on issue in each class in Tully as at the date of this Bidder's Statement is 3,089,900 Tully Shares.\*

*\* Source: Tully 2009 Annual Report*

### **3.5 Details of relevant interests in Tully securities**

Details of MSF's relevant interests in the securities of Tully are set out in the table below:

<b>Class of securities</b>	<b>Total number in class</b>	<b>Relevant interest of MSF immediately before Bidder's Statement lodged with ASIC</b>	<b>Relevant interest of MSF immediately before first Offer sent</b>
Tully Shares	Nil	Nil (0%)	Nil (0%)



### **3.6 Details of voting power in Tully**

MSF's voting power in Tully as at the date of this Bidder's Statement is 0%.

MSF's voting power in Tully as at the date immediately before the first Offer is sent is 0%.

### **3.7 Consideration provided for Tully securities during previous four months**

MSF and its associates have not acquired or disposed of Tully Shares during the period of four months including on the day immediately before the date of the Offer.

### **3.8 Inducing benefits given during previous four months**

Except as set out in this Bidder's Statement, neither MSF nor any of its associates has, during the period of four months ending on the day immediately before the date of the Offers, given, offered or agreed to give, a benefit to another person where the benefit was likely to induce the other person, or an associate, to:

- (a) accept an Offer; or
- (b) dispose of Tully Shares,

which benefit was not offered to all holders of Tully Shares under the Offers.

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## **4 MSF's intentions**

### **4.1 Introduction**

This section sets out MSF's intentions, on the basis of the facts and information concerning Tully which are known to it and the existing circumstances affecting the business of Tully, in relation to the following:

- (a) the continuation of Tully's business and assets;
- (b) any major changes to be made to the business of Tully, including any redeployment of the fixed assets of Tully; and
- (c) the future employment of the present employees of Tully.

### **4.2 Review**

MSF and its advisers have reviewed information that has been publicly released on Tully, its current activities and its plans for the future. However, MSF does not currently have knowledge of all material information, facts and circumstances that are necessary to assess the operational, commercial, taxation and financial implications of its current intentions. Consequently, final decisions on these matters have not been made.

Following the close of the Offer, MSF will, to the extent that information is available to it, conduct a review of the operations, assets, structure and employees of Tully in light of that information. Final decisions will only be reached after that review and in light of all material facts and circumstances. As such, statements set out in this section are statements of current intention only which may change as new information becomes available or circumstances change. The statements in this section 4 should be read in this context.

### **4.3 Intentions upon acquisition of 90% or more of Tully Shares**

This section sets out MSF's current intentions if it acquires 90% or more of the Tully Shares and is entitled to proceed to compulsory acquisition of the outstanding Tully Shares.

#### **(a) Compulsory acquisition**

If it becomes entitled to do so under the Corporations Act, MSF intends to:

- (i) give notices to compulsorily acquire any outstanding Tully Shares in accordance with section 661B of the Corporations Act; and
- (ii) give notices to Tully Shareholders to compulsorily acquire any outstanding Tully Shares in accordance with section 664C of the Corporations Act.

If it is required to do so under section 662A and section 663A of the Corporations Act, MSF intends to give notices to Tully Shareholders offering to acquire their Tully Shares in accordance with section 662B and section 663C of the Corporations Act.

**(b) Directors**

MSF intends to invite the Tully Board to nominate three people to become directors on the Merged Group Board.

**(c) Location of office**

Tully, as a subsidiary of MSF, will continue to be headquartered in Tully.

**(d) Operations and assets**

MSF expects Tully to continue as a sugar milling company in substantially the same manner as it is presently operated.

**(e) Employees**

MSF will seek to retain key members of the Tully executive management team and continue the employment of Tully's other employees subject to the outcomes of the review referred to in section 4.2 of this Bidder's Statement.

**4.4 Intentions upon acquisition of more than 80%, but less than 90% of Tully Shares**

This section sets out MSF's intentions if it were to satisfy the 80% minimum acceptance condition (and each of the other Offer Conditions are either satisfied or waived) without becoming entitled to compulsorily acquire the outstanding Tully Shares but, by virtue of acceptances of the Offer, MSF were to gain effective control of Tully. MSF reserves its right to declare the Offer free of any Offer Condition, although it has no present intention to do so.

**(a) Operations, assets and employees**

If, following the close of the Offer, Tully becomes a controlled entity but not a wholly owned subsidiary of MSF, it is the present intention of MSF to attempt to procure that Tully's board implements the objectives and goals outlined in sections 4.3(d) and (e) to the extent possible and appropriate.

**(b) Directors**

MSF intends to invite the Tully Board to nominate three people to become directors on the MSF Board.

**(c) Limitations on intentions**

To the extent that Tully is not a wholly owned subsidiary of MSF and there are minority Tully Shareholders, MSF intends that the directors of Tully appointed by it will act at all times in accordance with their fiduciary duties and that all requisite shareholder approvals and other legal requirements are complied with in pursuing any of the intentions outlined above.

Those requirements may require the approval of minority Tully Shareholders to the implementation of any particular objective.

The requirement to have regard to those fiduciary duties in the context of a partly owned company and the possible requirements of minority Tully Shareholder approval may prevent the particular objective being achieved.

It should be noted that MSF has not currently identified any particular initiative where these considerations may be relevant.

**(d) Compulsory acquisition at a later time**

If MSF becomes entitled at some later time to exercise general compulsory acquisition rights under Part 6A.2 of the Corporations Act, it may exercise those rights.

**4.5 Intentions upon acquisition of more than 50.1%, but less than 80% of Tully Shares**

This section sets out MSF's intentions if it were to declare the Offer free from the 80% minimum acceptance condition (and each of the other Offer Conditions are either satisfied or waived) without becoming entitled to compulsorily acquire the outstanding Tully Shares but, by virtue of acceptances of the Offer, MSF were to gain effective control of Tully. MSF reserves its right to declare the Offer free of the 80% minimum acceptance condition (or any other Offer Condition), although it has no present intention to do so.

**(a) Operations, assets and employees**

If, following the close of the Offer, Tully becomes a controlled entity but not a wholly owned subsidiary of MSF, it is the present intention of MSF to attempt to procure that Tully's board implements the objectives and goals outlined in sections 4.3(d) and (e) to the extent possible and appropriate.

**(b) Limitations on intentions**

To the extent that Tully is not a wholly owned subsidiary of MSF and there are minority Tully Shareholders, MSF intends that the directors of Tully appointed by it will act at all times in accordance with their fiduciary duties and that all requisite shareholder approvals and other legal requirements are complied with in pursuing any of the intentions outlined above.

Those requirements may require the approval of minority Tully Shareholders to the implementation of any particular objective.

The requirement to have regard to those fiduciary duties in the context of a partly owned company and the possible requirements of minority Tully Shareholder approval may prevent the particular objective being achieved.

It should be noted that MSF has not currently identified any particular initiative where these considerations may be relevant.

**(c) Compulsory acquisition at a later time**

If MSF becomes entitled at some later time to exercise general compulsory acquisition rights under Part 6A.2 of the Corporations Act, it may exercise those rights.

**4.6 Intentions upon acquiring less than 50.1% of Tully**

If MSF waives its 80% minimum acceptance condition (and each of the other Offer Conditions are either satisfied or waived) and acquires less than 50.1% of Tully Shares, the Tully Shares acquired by MSF will become an investment of MSF which would be reviewed by MSF in accordance with its usual investment policies.

**4.7 Intentions generally**

Except for the changes and intentions set out in this section 4, MSF intends, based on the information presently known to it:

- (a) to continue the business of Tully;
- (b) not to make any major changes to the business of Tully or the deployment of Tully's assets; and
- (c) to continue the employment of Tully's employees.

**4.8 Limitations on intentions**

The intentions and statements of future conduct set out in this section 4 must be read as being subject to:

- the law (including the Corporations Act) and the ASX Listing Rules, including in particular the requirements of the Corporations Act and the ASX Listing Rules in relation to conflicts of interest and "related party" transactions given that if MSF obtains control of Tully but does not acquire all of the Tully Shares it will be treated as a related party of Tully for these purposes; and
- the legal obligations of the Tully directors at the time, including any nominees of MSF to act in good faith in the best interests of Tully and for proper purposes and to have regard to the interests of all Tully Shareholders (in which regard, the role of independent directors of Tully will also be important).

---

## 5 Profile of the Merged Group

### 5.1 Introduction

- (a) The pro-forma financial information comprises a pro-forma consolidated balance sheet (pro-forma balance sheet) together with supporting notes.

(i) **Information prepared**

The pro-forma balance sheet is presented on the following bases:

- (A) **Scenario 1:** Assuming MSF acquires 100% of the share capital of Tully. This scenario shows the exclusion and inclusion of the merger benefits that arise from MSF's decision to enter the tax consolidation regime with an effective date of 1 July 2008.
- (B) **Scenario 2:** Assuming MSF acquires 80% of the share capital of Tully.

(ii) **Basis of preparation**

The pro-forma balance sheet has been prepared for illustrative purposes to show the pro-forma consolidated balance sheet as if the merger had occurred with effect from 1 July 2009. For reporting purposes in the future, the consolidated financial statements for MSF will incorporate Tully from the date of acquisition.

The pro-forma balance sheet is based on the most recent publicly available balance sheets of MSF (extracted from the annual financial report for the year ended 30 June 2009) and Tully (extracted from the annual financial report for the year ended 30 April 2009).

Under the proposed Offer, the Offer consideration payable to Tully Shareholders is 13 MSF Shares for each Tully Share, representing a total purchase consideration of approximately \$90.4 million (**see adjustment 1 below which assumes a share price of \$2.25, being the VWAP of MSF Shares for the 20 trading days prior to the date of this Bidder's Statement**).

Where necessary, the accounting policies of Tully will be changed to ensure consistency with the policies adopted by MSF as disclosed in the Annual Financial report of MSF released to the ASX on 30 September 2009.

The MSF, Tully and the Merged Group's financial information has been presented in abbreviated form. It does not contain all the disclosures usually provided in an annual report prepared in accordance with the Corporations Act.

(b) **Tully financial information**

In preparing pro-forma financial information on the Merged Group, financial information regarding Tully was required. For the purposes of

this Bidder's Statement, that information has been sourced from publicly available information.

MSF does not make any representation or warranty, express or implied, as to the accuracy or completeness of that information. Tully may release updated financial information in any target's statement which is sent to Tully Shareholders.

## **5.2 Pro-forma balance sheet**

Set out below is the pro-forma balance sheet of the Merged Group as at 30 June 2009 on the basis of the 2 scenarios set out above.

Scenario 1 shows the pro-forma balance sheet of the Merged Group as at 30 June 2009 excluding and including the merger benefits that arise from MSF's decision to enter the tax consolidation regime with an effective date of 1 July 2008. As a consequence of the MSF decision to enter tax consolidation, MSF is able to obtain a tax benefit related to increasing the tax cost base of assets acquired once 100% of the share capital of Tully is acquired. The merger benefit that arises from acquiring 100% of Tully is shown separately as a separate adjustment in the pro-forma balance sheet.

Scenario 2 shows the pro-forma balance sheet of the Merged Group as at 30 June 2009 assuming that MSF acquires 80% of the Tully Shares on issue. In this scenario, MSF is not able to obtain the tax benefit related to the increase in the tax cost base of assets acquired. MSF would also recognise a component of equity relating to non-controlling interests.

The adjustments are explained in detail below the pro-forma balance sheet.

Pro-forma consolidated balance sheets of Merged Group

	MSFL 30/06/2009 \$000	Tully 30/04/2009 \$000	Adj 1 \$000	Scenario 1 Excluding benefit of tax consolidation 100% Tully purchased \$000	Adj 2 \$000	Scenario 1 Including benefit of tax consolidation 100% Tully purchased \$000	Scenario 2 Excluding benefit of tax consolidation 80% Tully purchased \$000
<b>Current assets</b>							
Cash and cash equivalents	4,690	2,082	(1,000)	5,772		5,772	5,772
Trade and other receivables	5,463	17,231		22,694		22,694	22,694
Derivative financial instruments	5,503	-		5,503		5,503	5,503
Inventories	13,725	5,713		19,438		19,438	19,438
Biological assets	3,435	1,875		5,310		5,310	5,310
<b>Total current assets</b>	<b>32,816</b>	<b>26,901</b>	<b>(1,000)</b>	<b>58,717</b>	<b>-</b>	<b>58,717</b>	<b>58,717</b>
<b>Non-current assets</b>							
Trade and other receivables	321	-		321		321	321
Inventories	1,093	-		1,093		1,093	1,093
Available-for-sale financial assets	36,365	5,506		41,871		41,871	41,871
Property, plant and equipment	113,366	121,374	(27,745)	206,995		206,995	206,995
Investment property	-	5,210		5,210		5,210	5,210
Deferred tax assets	3,535	-		3,535		3,535	3,535
Other non current assets	184	-		184		184	184
Intangible assets	3,408	4		3,412		3,412	3,412
<b>Total non-current assets</b>	<b>158,272</b>	<b>132,094</b>	<b>(27,745)</b>	<b>262,621</b>	<b>-</b>	<b>262,621</b>	<b>262,621</b>
<b>Total assets</b>	<b>191,088</b>	<b>158,995</b>	<b>(28,745)</b>	<b>321,338</b>	<b>-</b>	<b>321,338</b>	<b>321,338</b>
<b>Current liabilities</b>							
Trade and other payables	11,284	11,093		22,377		22,377	22,377
Interest bearing liabilities	14,282	132		14,414		14,414	14,414
Derivative financial instruments	22,187	-		22,187		22,187	22,187
Provisions	2,023	1,325		3,348		3,348	3,348
<b>Total current liabilities</b>	<b>49,776</b>	<b>12,550</b>	<b>-</b>	<b>62,326</b>	<b>-</b>	<b>62,326</b>	<b>62,326</b>
<b>Non-current liabilities</b>							
Trade and other payables	2,413	-		2,413		2,413	2,413
Interest bearing liabilities	33,769	849		34,618		34,618	34,618
Derivative financial instruments	9,512	8,956		18,468		18,468	18,468
Deferred income/grants	-	1,726		1,726		1,726	1,726
Deferred tax liabilities	-	20,262	(8,323)	11,939	(17,606)	(5,667)	11,939
Superfund liability	-	2,068		2,068		2,068	2,068
Provisions/other	280	2,783		3,063		3,063	3,063
<b>Total non-current liabilities</b>	<b>45,974</b>	<b>36,644</b>	<b>(8,323)</b>	<b>74,295</b>	<b>(17,606)</b>	<b>56,689</b>	<b>74,295</b>
<b>Equity</b>							
Ordinary equity	77,922		90,380	168,302		168,302	150,226
Reserves	1,809			1,809		1,809	1,809
Retained earnings	15,607		(1,000)	14,607	17,606	32,213	14,607
Minority interest	-			-		-	18,076
<b>Shareholders funds</b>	<b>95,338</b>	<b>-</b>	<b>89,380</b>	<b>184,718</b>	<b>17,606</b>	<b>202,324</b>	<b>184,718</b>
<b>Total liabilities and equity</b>	<b>191,088</b>	<b>49,194</b>	<b>81,056</b>	<b>321,338</b>	<b>-</b>	<b>321,338</b>	<b>321,338</b>

### 5.3 Key assumptions used to compile the Merged Group pro-forma balance sheet

The following key assumptions have been applied in compiling the Merged Group pro-forma balance sheet:

(a) Cost of investment

MSF proposes to acquire all Tully Shares. The Offer consideration is 13 MSF Shares for each Tully Share. This has the following impact on the scenarios disclosed above:

- **Scenario 1** – The proposed share consideration would result in MSF issuing approximately 40.17 million new MSF Shares. At an issue price of \$2.25, being the VWAP of MSF Shares for the 20 trading days prior to the date of this Bidder's Statement, the value of the proposed offer would be approximately \$90.4 million. Adjustment 1 above shows the impact of the issue of new shares to MSF's Shareholders' equity.
- **Scenario 2** – this scenario assumes that only 80% of Tully Shares on issue are acquired. This results in the recognition of a



lower cost of investment of \$72.3 million and a minority interest of \$18 million.

**(b) Fair value of net identifiable assets acquired**

The carrying value of Tully's property plant and equipment has been reduced by \$27.7 million, with a resultant adjustment to deferred tax of \$8.3 million, to reflect MSF's expectation of the adjustments that would be required in undertaking the purchase price allocation upon completion of the acquisition of Tully for a cost of investment of approximately \$90.4 million. In making this adjustment MSF has had regard to the following:

- Tully records property, plant and equipment in its financial statements at valuation determined on the basis of depreciated replacement cost. Consequently, the book value of Tully's property, plant and equipment of \$121.4 million as at 30 April 2009 has been uplifted by \$41.6 million (in the year ended 30 April 2007) or 34%. MSF's accounting policy has been to record property plant and equipment at cost subject to impairment testing. MSF believes that consistent application of its accounting policies to Tully would make the amounts attributed to sugar milling assets more directly comparable.
- The accounting standards applicable to business combinations would encourage MSF to critically review the book value of assets and liabilities where they exceed the acquisition cost. MSF believes that the material consequences of any such critical review would result in changes to property plant and equipment carrying values rather than any other treatment.

**(c) Tax consolidation merger benefit**

The MSF Directors approved the adoption of tax consolidation for the MSF Group in August 2009 with an effective date of 1 July 2008. On the date of the merger, Tully would enter the MSF tax consolidated group and the tax base of Tully's assets will be reset broadly to fair value. For these purposes, it is assumed that the reset tax cost of the assets acquired will equal the carrying value of the assets in the pro-forma balance sheet and liabilities will be uplifted to fair value. The historic deferred tax liability which accounts for the difference between the tax value and the accounting value of the assets would be extinguished because future tax payments would be reduced. This results in a \$17.6 million benefit to the Merged Group.

It should be noted that this will only happen on acquisition if MSF acquires 100% of Tully. Consequently this adjustment is excluded from Scenario 2.

**(d) Transaction costs**

Forecast transaction costs of \$1 million have been expensed to retained earnings. Preliminary analysis suggests that no stamp duty will become payable as a result of this transaction. Refer to section 8 of this Bidder's Statement for further information.

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## **6 Funding**

### **6.1 Consideration under the Offer**

The consideration for the acquisition of Tully Shares to which the Offer relates will be by the issue of MSF Shares.

### **6.2 Shares consideration**

Based on the number of Tully Shares on issue as at the date of this Bidder's Statement (3,089,900 according to Tully's 2009 Annual Report), the maximum number of MSF Shares which may need to be issued in accordance with the Offer if acceptances were received for all Tully Shares is 40,168,700.

### **6.3 Source of shares consideration**

MSF has the capacity to issue the maximum number of MSF Shares which it may be required to issue under the Offer. The issue of new MSF Shares without first obtaining MSF Shareholder approval is permitted under ASX Listing Rule 7.2, Exception 5.

### **6.4 Provision of consideration**

On the basis of the arrangements described in this section, MSF is of the opinion that it has a reasonable basis for holding the view, and holds the view, that MSF will be able to provide the consideration offered under the Offer.

## 7 Taxation considerations



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30 September 2009

**Subject: The Maryborough Sugar Factory Limited  
Proposed Merger with Tully Sugar Limited  
Taxation Opinion - Shareholders**

Dear Directors

We refer to the request by the Board of Directors of The Maryborough Sugar Factory Limited ("MSF") to prepare a Taxation Opinion outlining the taxation implications for the shareholders of Tully Sugar Limited ("Shareholders") in relation to the proposed Merger (the "Offer") involving the offer by MSF to acquire the shares in Tully Sugar Limited ("Tully"). We understand that this Taxation Opinion will be included in MSF's Bidder's Statement to be dated on or about 30 September 2009 in relation to the proposed merger with Tully.

### EXECUTIVE SUMMARY

The key Australian income tax implications for Shareholders in relation to the proposed merger with Tully are summarised as follows:

- Shareholders may make a capital gain or capital loss in respect of their Tully shares to the extent that the consideration received under the Offer differs from the capital gains tax ("CGT") cost base or reduced cost base of the Tully shares exchanged under the offer.
- Individual, trustee and superannuation fund Shareholders that have held (or are deemed to have held) their Tully shares for at least twelve months and one day may be eligible for CGT discount concessions.
- Shareholders may choose to obtain roll-over relief under the CGT scrip for scrip rules if MSF becomes the owner of 80% or more of the voting shares in Tully.

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- If scrip for scrip roll-over relief is available, any capital gain realised by Shareholders on the sale of Tully shares to MSF may be disregarded. On this basis, the capital gain will be deferred until the shares in MSF received as consideration under the Offer are sold or otherwise dealt with for CGT purposes.
- No scrip for scrip roll-over relief is available if a capital loss is realised on the sale of Tully shares or if the Tully shares were acquired (or taken to be acquired) before 20 September 1985. However, the CGT cost base of the shares in MSF received as consideration under the Offer will be the market value of the MSF shares at the time the contract for the disposal of the Tully shares is entered into.
- Where a CGT scrip for scrip roll-over choice is made:
  - The replacement shares in MSF will have a deemed acquisition date which corresponds to the original acquisition date for the relevant shares in Tully that are exchanged. This will be relevant for determining whether Shareholders will be eligible to avail themselves of the CGT discount concessions on any future disposal of the MSF shares.
  - The cost base and reduced cost base of the replacement MSF Shares will reflect proportionally the cost base and reduced cost base that the Shareholders have in their Tully Shares.
- The Australian tax implications associated with owning shares in MSF (for example in relation to dividends received and upon a future sale) will be similar to the current ownership of shares in Tully.

#### SCOPE OF TAXATION OPINION

This Taxation Opinion is a general description of the Australian taxation consequences for Tully Shareholders who accept the Offer from MSF or who have their shares compulsorily acquired by MSF.

This Taxation Opinion is based on the law and administrative practices in effect as at the date of this letter, including the *Income Tax Assessment Act 1936* ("ITAA 1936"), the

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*Income Tax Assessment Act 1997 ("ITAA 1997"), the A New Tax System (Goods and Services Tax) Act 1999, and our understanding of the current administrative approach of the Australian Taxation Office ("ATO") as reflected by published rulings and determinations.*

The law is complex and is subject to change periodically as is its interpretation by the courts and the ATO. We have not sought to have our opinion ruled upon by the ATO and therefore there is a risk that the ATO may not agree with our opinion or aspects of it.

The Taxation Opinion does not take into account changes in the law after this date, whether by way of judicial decision or legislative action.

This Taxation Opinion applies to those Tully Shareholders who are Australian residents for taxation purposes and who hold their shares in Tully on capital account. It does not address the taxation treatment of those Shareholders who:

- hold their shares in Tully on revenue account (for example, because the shares in Tully are held in relation to the conduct of a share trading business or to derive a profit); or
- are not Australian residents for taxation purposes.

Shareholders holding their shares on revenue account will or may be subject to special or different tax consequences peculiar to their circumstances, and they should accordingly seek specialist advice tailored to those circumstances.

Shareholders who are not resident in Australia for tax purposes should also take into account the tax consequences under the laws of their country of residence, as well as under Australian law, of acceptance of the Offer.

Shareholders should seek independent professional advice regarding the consequences of accepting this offer based on their own particular circumstances.

## INCOME TAX CONSEQUENCES OF ACCEPTING THE OFFER

Pursuant to the Offer, MSF proposes to acquire all Tully shares, with Tully Shareholders offered 13 MSF shares for each Tully share acquired. The Offer is subject to, *inter alia*,

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The Directors  
The Maryborough Sugar Factory Limited  
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MSF acquiring at least 80% of Tully shares on issue and to the Treasurer of the Commonwealth of Australia consenting to the proposed acquisition under the *Foreign Acquisitions and Takeovers Act 1975*.

#### Calculation of Gain or Loss

Acceptance of the Offer will involve a disposal by Shareholders of their shares in Tully to MSF. This disposal of shares in Tully will constitute a CGT event for Australian CGT purposes (however see below for the potential availability of roll-over relief).

Australian resident Shareholders who acquired (or are taken to have acquired) their Tully shares on or after 20 September 1985 may make a capital gain or capital loss on disposal of their shares in Tully. No taxable capital gain or capital loss will arise in respect of Tully shares which were acquired (or taken to have been acquired) before 20 September 1985.

A capital gain will result where the capital proceeds from the disposal of shares in Tully are more than the cost base of those shares. Alternatively, a capital loss will result where the capital proceeds are less than the reduced cost base of the shares in Tully.

The capital proceeds relating to the disposal will be equal to the market value of the MSF shares received by Shareholders in respect of the disposal of their shares in Tully pursuant to the Offer.

For these purposes, the value of the shares in MSF will be their market value on the date the contract for the disposal is entered into (being the later of the date on which the Commonwealth Treasurer consents to the proposed acquisition under the Commonwealth's Foreign Takeover law and the date Shareholders accept the Offer by forwarding their completed and signed Acceptance Form).

The cost base of the shares in Tully will generally be their cost of acquisition or deemed cost of acquisition. Certain other amounts associated with the acquisition or disposal of the shares in Tully (such as stamp duty and brokerage) may be added to the cost base. Further, if the reduced cost base is to be determined (to calculate a capital loss), certain adjustments to the cost base of the shares in Tully may need to be made.

Capital gains (for which roll-over relief is not available or not chosen) and capital losses of a taxpayer in a year of income are aggregated to determine whether there is a net capital gain. Any net capital gain is included in assessable income and is subject to income tax

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at the taxpayer's marginal tax rate. However, a CGT discount may be available to reduce the net capital gain for certain Shareholders (see below).

Note that capital losses may only be offset against a capital gain – they cannot be deducted against other income for income tax purposes. However, if capital losses exceed capital gains in an income year, the capital losses may be carried forward to be offset against capital gains made in future income years (subject to the satisfaction of the relevant loss utilisation rules for corporate taxpayers).

#### **CGT Discount**

In general, if a share in Tully has been held for less than twelve months before the disposal date (that is, the date that the contract for disposal is entered into), the capital gain or capital loss is calculated on the difference between the capital proceeds and the cost base or reduced cost base for the share.

However, if a share in Tully has been held for at least twelve months before the disposal date, in calculating the capital gain, eligible Shareholders may be able to use the CGT discount method to reduce their capital gain.

If the Shareholder is an individual, complying superannuation fund or trust and held the shares in Tully for at least twelve months and one day before the disposal date, they should be entitled to the CGT discount for any capital gains arising in respect of shares disposed of under the Offer. The CGT discount entitles such shareholders to reduce their capital gain on those shares (after deducting available capital losses of the shareholder) by half in the case of individuals and trusts, or by one-third in the case of complying superannuation funds. Trustees should seek specific advice regarding the tax consequences of distributions attributable to discounted capital gains.

The CGT discount is not relevant for the purposes of calculating a capital loss. Further, the CGT discount is also not available to companies, or where the shares in Tully have been held for less than twelve months. In this respect, it is noted that special rules apply to determine if shares have been held for the requisite period. Shareholders should seek their own advice on this issue.

As an alternative to the CGT discount, Shareholders who held shares on or before 21 September 1999 can choose to include indexation in the CGT cost base of the Shares.

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Shareholders should seek independent professional advice in relation to the making of this choice.

#### **Scrip For Scrip Roll-over Relief**

If, as a result of the Offer, MSF becomes the owner of 80% or more of the voting shares in Tully, Shareholders who would otherwise make a capital gain from the disposal of their shares in Tully pursuant to the Offer may choose to obtain scrip for scrip roll-over relief. The Shareholder's choice must be made by the day on which their income tax return for the year in which the disposal of the Tully shares occurs is lodged with the ATO. Further, the way in which Shareholders prepare their income tax return is taken to be sufficient evidence of the making of the choice.

Where a choice for scrip for scrip roll-over relief is made, the capital gain made from the receipt of shares in MSF under the Offer as consideration may be disregarded and effectively deferred until the Shareholder disposes of the shares in MSF which they acquire under the Offer.

Making the roll-over choice will affect the cost base of the shares in MSF received as consideration under the Offer. By choosing roll-over relief, the cost base and reduced cost base of the shares in MSF received as consideration under the Offer will reflect proportionally the respective cost base and reduced cost base that the Shareholders have in their shares in Tully that are disposed of under the Offer.

In addition, the time of acquisition of the shares in MSF received as consideration under the Offer will be taken for CGT purposes to be the time that Shareholders acquired their shares in Tully. This acquisition date will be relevant for the purposes of determining whether any entitlement to the CGT discount is available in respect of future dealings with the shares in MSF received as consideration under the Offer.

The benefit of choosing scrip for scrip roll-over relief will depend upon the particular circumstances of Shareholders. As such, Shareholders should consult their own tax advisor for further advice in this regard. Making the roll-over choice will affect the tax consequences of a future disposal of the shares in MSF received as consideration under the Offer (refer below).

Note that if a Shareholder realises a capital loss from accepting the Offer, roll-over relief will not be available to that Shareholder. Capital losses can only be offset against capital

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gains realised by the Shareholder in the same year of income or in subsequent years of income, subject to the satisfaction of any relevant tax loss utilisation rules.

Further, if a Shareholder acquired any Tully shares on or before 20 September 1985, scrip for scrip roll-over relief will not be available in respect of any gain made on those shares. However, as noted above, the Shareholder will not realise a taxable capital gain in relation to those shares.

**Example Where Scrip for Scrip Roll-over is Chosen.**

*A Tully Shareholder holds 100 shares in Tully and the average cost base per share is \$13.00. Under the Offer, the Shareholder will receive 13 MSF shares for every Tully share. In this regard the Tully Shareholder will receive 1,300 shares in MSF in exchange for the 100 Tully shares.*

*If the market value of the MSF shares on the date the Shareholder accepts the offer is \$2.25 (MSF's volume weighted average share price during August 2009 to 27 August 2009), then the capital proceeds the Shareholder receives will be calculated as:*

$$1,300 \text{ shares} \times \$2.25 = \$2,925$$

*Prima facie, the Shareholder would make a capital gain of:*

$$\$2,925 - \$1,300 = \$1,625$$

*However, this capital gain will be disregarded if the Shareholder chooses to obtain roll-over relief.*

*If the Shareholder chooses roll-over relief, then the cost base of the 1,300 MSF shares they receive will be the cost base of their original shares in Tully. That is, the aggregate cost base of their MSF shares will be \$1,300 or \$1.00 per share (\$1,300 / 1,300 MSF shares = \$1.00).*

*Note: Shareholders should seek independent professional advice on the consequences of accepting the offer based on their particular circumstances.*

(7)

The Directors  
The Maryborough Sugar Factory Limited  
30 September 2009

## **INCOME TAX CONSEQUENCES OF DISPOSAL OF SHARES IN MSF RECEIVED AS CONSIDERATION UNDER THE OFFER**

The disposal of the shares in MSF received as consideration under the Offer will be subject to the same Australian CGT consequences described above in relation to the disposal of shares in Tully, subject to the following differences in the case of a Shareholder that chooses to obtain scrip for scrip roll-over relief in relation to the exchange of shares in Tully for the shares in MSF received as consideration under the Offer, and those that do not.

### **Where Roll-over Chosen**

For those Shareholders who choose to obtain scrip for scrip roll-over relief, the cost base and reduced cost base of the shares in MSF received as consideration under the Offer will reflect proportionately the respective cost base and reduced cost base for the shares in Tully that are exchanged for the MSF shares received as consideration under the Offer (as outlined above).

In the event of a future capital gain arising on a disposal of the shares in MSF received as consideration under the Offer, eligibility for the CGT discount concession for Shareholders who chose to obtain scrip for scrip roll-over relief will be based on the original acquisition date of the shares in Tully which were exchanged for the MSF shares.

### **Where Roll-over Not Chosen or Not Available**

Where roll-over relief was not chosen, or was not applicable to the disposal of the shares in Tully, the cost base of the shares in MSF which will be received as consideration under the Offer will be the market value of the shares in MSF at the date of entry into the contract for acquisition (as outlined above).

In this case, Shareholders who are individuals, trustees or superannuation funds must determine their compliance with the twelve month period for the CGT discount on the disposal of the shares in MSF received as consideration under the Offer by reference to the date of acquisition of the shares in MSF (that is, not from the date of acquisition of the original shares in Tully).

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The Directors  
The Maryborough Sugar Factory Limited  
30 September 2009

## **INCOME TAX CONSEQUENCES OF OWNERSHIP OF SHARES IN MSF**

The Australian tax consequences of ownership of the shares in MSF received as consideration under the Offer are essentially the same as the Australian tax consequences of the ownership of shares in Tully.

Australian resident Shareholders must include dividends in their assessable income and, to the extent that those dividends are franked, resident shareholders must include in their assessable income an additional amount equivalent to the underlying franking credit. A tax offset equal to the amount of the franking credit is available to the Shareholder in respect of their income tax payable for the relevant income year.

In this respect, where the income tax payable of a Shareholder that is an individual or complying superannuation fund is less than the franking credit offset available (before the application of any tax offsets), the excess franking credits may be refunded to the Shareholder.

Any excess franking credits are not able to be refunded to corporate Shareholders. However, excess franking credits can be converted by a corporate Shareholder to a tax loss that may be utilised in future years (subject to the satisfaction of the relevant loss utilisation rules). In addition, a corporate Shareholder should be entitled to a credit in its franking account for franking credits received which are then available for distribution as part of a franked dividend to its shareholders.

It should be noted that subject to certain exemptions, a Shareholder may be required to have held their shares in MSF received as consideration under the Offer for at least 45 days materially "at risk" in order to be eligible for the franking credit benefits outlined above. Shareholders should consult their own tax advisor for further advice in this regard.

## **GOODS & SERVICES TAX CONSEQUENCES**

Shareholders will not be required to pay Goods & Services Tax ("GST") on the sale of existing shares in Tully and the acquisition of shares in MSF received as consideration under the Offer.

We note that, while no GST is payable on the transfer or disposal of shares, Shareholders registered or required to be registered for GST in Australia will need to determine the

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The Directors  
The Maryborough Sugar Factory Limited  
30 September 2009

extent, if any, to which amounts paid in respect of GST are paid by them on acquisitions relating to those events and should be denied.

#### DISCLAIMER

To persons receiving this document in Australia:

The information contained in this document does not constitute "financial product advice" within the meaning of the Corporations Act 2001 ("Corporations Act"). The PricewaterhouseCoopers Partnership which is providing this advice is not licensed to provide "financial product advice" under the Corporations Act. To the extent that this document contains any information about a "financial product" within the meaning of the Corporations Act, taxation is only one of the matters that must be considered when making a decision about the relevant "financial product".

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Allan Neilsen'.

Allan Neilsen  
Partner  
Tax and Legal Services

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## **8 Investment risks**

### **8.1 Introduction**

There are a number of factors, both specific to MSF and of a general nature, which may affect the future operating and financial performance of MSF, the market price of MSF Shares and the outcome of an investment in MSF by subscribing for MSF Shares under the Offer. There can be no guarantee that MSF will achieve its stated objectives, that forecasts will be met or that forward looking statements will be realised.

This section describes some, but not all, risks associated with an investment in MSF by subscribing for MSF Shares by accepting the Offer. Prior to making an investment decision, prospective investors should carefully consider the following risk factors, as well as the other information contained in this Bidder's Statement or of which they are otherwise aware. If you are in any doubt as to the action you should take, you should consult your legal, financial, taxation or other professional adviser immediately.

### **8.2 General risk factors**

#### **(a) Share market**

MSF Shares may trade on ASX at higher or lower prices than the share price at the time of the Offer. The share price at the time the MSF Shares are issued may be higher or lower than the share price as at the date of this Bidder's Statement. Shareholders who decide to sell their MSF Shares may not receive the amount of their original investment. There can be no guarantee that an active market in MSF Shares will continue following the Offer or that the price of MSF Shares will increase.

The price at which the MSF Shares trade on ASX may be affected by the financial performance of MSF and by external factors over which the MSF Directors and MSF have no control. These factors include movements on international share markets, local interest rates and exchange rates, domestic and international economic conditions, market supply and demand, and government taxation and other policy changes.

Changes to laws and regulations or accounting standards that apply to MSF from time to time could also adversely impact on MSF's earnings and financial performance.

#### **(b) Economic conditions**

The operating and financial performance of MSF is influenced by a variety of general economic and business conditions including the level of inflation, interest rates and exchange rates, government fiscal, monetary and regulatory policies. A prolonged deterioration in general economic conditions, including an increase in interest rates or a decrease in consumer and business demand, could be expected to have a material adverse impact on MSF's business or financial condition.

In particular, the market prices for many listed entities have in recent times been subject to wide fluctuations, which in many cases may reflect a diverse range of non-entity specific influences such as global hostilities and tensions, acts of terrorism, investor sentiment and the general state

of the economy. The global financial crisis has severely impacted the world economy in the last year with both positive and negative effects on the sugar industry. While there has been volatility in equity, commodity, financial and currency markets, the overall demand for traded sugar has continued to increase due to global supply constraints and rising global demand. Such sugar market fluctuations may materially adversely (or beneficially) affect, the market price of MSF Shares, along with the value of other sugar companies who sell into the world market.

### **8.3 Specific risk factors pertaining to the sugar industry**

The businesses of MSF and Tully are dependent to some degree on the economic cycles of the sugar industry in which they and their customers and suppliers operate. Specifically, the sugar industry often experiences some (and sometimes considerable) degree of cyclical change. In the event that this industry experienced a severe cyclical down turn then the operating results of the Merged Group could be impacted negatively.

There are certain risks that are common to most companies involved in the sugar industry. The existing businesses of MSF and Tully are exposed to these risks, and the Merged Group would be similarly exposed. These risks include:

#### **(a) Sugar prices**

Fluctuations in sugar prices affect companies involved in the sugar industry. Sugar prices are highly sensitive to changes in supply, which are influenced by factors such as consumer demand, climatic uncertainties, currency fluctuations, competition and changes in foreign trade policies.

#### **(b) Variations in crop sizes**

Variations in crop sizes can influence the financial performance of companies involved in the sugar industry. Crop sizes are affected by various uncertainties including weather conditions, pests, crop disease and farm management decisions by growers.

#### **(c) General changes to laws and regulations**

General changes to laws and regulations may have a material adverse effect on companies involved in the sugar industry.

#### **(d) Operational risks**

Companies involved in the sugar industry are also subject to various operational risks including machinery breakdown, systems failure, extreme weather (such as cyclones, floods, drought and frost), fire, pests, diseases, supply issues, workplace disputes and environmental obligations.

### **8.4 Specific risk factors relating to MSF and the Merged Group**

#### **(a) Management actions**

The MSF Directors will, to the best of their knowledge, experience and ability (in conjunction with their management) endeavour to anticipate, identify and manage the risks inherent in the activities of MSF, but without assuming any personal liability for performing such role, with

the aim of eliminating, avoiding and mitigating the impact of risks on the performance of MSF and the MSF Shares.

**(b) Future funding requirements**

In order to proceed with its business plan, MSF may be required to raise additional equity and/or debt capital in the future. There is no assurance that it will be able to raise such capital when it is required or that the terms associated with providing such capital will be satisfactory to MSF, which may prejudice its ongoing ability to implement its business plan. The inability to obtain sufficient financing when required may have a material adverse effect on MSF.

**(c) Risks related to MSF's debt levels**

Although the MSF Directors consider MSF's debt levels to be appropriate given MSF's current business plan, MSF's level of debt makes it somewhat vulnerable to general adverse economic conditions, as well as to conditions in the sugar industry, which may require MSF to dedicate a substantial portion of its cash flow from operations to debt payments, thereby decreasing the availability of its cash flow for business operations. This could limit MSF's flexibility and ability to plan for, or react to, changes in its business and the sugar industry.

**(d) Dependence on key personnel**

MSF's success depends to a significant extent upon its key management personnel, as well as other management personnel. While efforts are made to retain the services of key personnel, the loss of the services of such personnel could have a material adverse effect upon MSF.

**(e) Delivery failure**

If MSF fails to meet its delivery obligations under contracts to which MSF is a party, damages may become payable. Delivery failure and any damages liability which flows from this failure may have a material adverse effect on MSF.

**(f) Insurance**

MSF purchases insurance that provides a degree of protection for its assets, liabilities and people. Such policies include material damage of assets, contract works, business interruption, general and professional liability and workers compensation. There are however certain risks that are uninsurable (eg nuclear, chemical or biological incidents) or risks where the insurance coverage is reduced (eg cyclone, earthquake). Additionally MSF will face risk associated with the financial strength of its insurers to meet their indemnity obligations when called upon, which could have an effect on earnings.

**(g) Occupational health and safety**

There is a risk that MSF could fail to comply with the necessary occupational health and safety legislative requirements that could result in fines, penalties and compensation for damages as well as reputational damage to MSF.

**(h) Major supply contracts**

MSF has a number of major supply contracts for products and raw materials which are due to expire over the short to medium-term. If MSF is not able to renew these contracts or negotiate new contracts with alternate suppliers on terms that are no less favourable than the current contracts, this may have an adverse impact on MSF's earnings.

**(i) Credit / counterparty risk**

The risk that third parties, such as cane-growers, major suppliers, major customers and parties to other contracts could become insolvent, default under any relevant agreement or otherwise become unwilling or unable to perform their obligations to MSF. Failure by a party to a contract with MSF to comply with that party's obligations could have a material adverse effect on MSF.

**(j) Foreign exchange risk**

MSF's revenues are predominantly denominated in US dollars. MSF's expenses are predominantly denominated in Australian dollars. Measures have been adopted by MSF to limit the risks from fluctuations in currency exchange rates. Changes in currency exchange rates may have an adverse impact upon the financial performance or financial position of MSF.

**(k) Carbon Pollution Reduction Scheme (CPRS)**

The CPRS legislative package (comprising 11 Bills) was passed by the House of Representatives on 4 June 2009 and voted down by the Senate on 14 August 2009. The CPRS has the potential to impact the Australian economy and the sugar industry in a variety of ways (in whatever form it ultimately takes), however the effects remain unclear to date. The Federal Government has indicated that it intends to reintroduce the Bills before the end of 2009.

**(l) Material litigation**

MSF is not currently involved in any material litigation as a defendant and is not aware of any facts or circumstances that may give rise to any material litigation commenced against it. However, given the nature and scope of MSF's activities and the wide range of parties it deals with, MSF may be exposed to potential claims or litigation from third parties such as suppliers, regulators, employees and contractors. To the extent that these risks are not covered by MSF's insurance policies, litigation and the costs of responding to any threats of legal action or investigation may have an adverse impact on the financial performance or prospects of MSF.

**(m) External factors**

Other external factors which may impact on MSF's performance include changes or disruptions to political, regulatory, legal or economic conditions or to the national or international financial markets including as a result of terrorist attacks or war or insurrection.



## **8.5 Risks relating to the Offer**

### **(a) Issue of MSF Shares**

Pursuant to the Offer, MSF will issue a significant number of new MSF Shares. Some Tully Shareholders may not wish to continue to hold MSF Shares which they receive and may sell them on ASX. Further, if required, a nominee appointed by MSF (and approved by ASIC) will be issued any MSF Shares attributable under the Offer to Foreign Shareholders and will sell them in accordance with the terms of the Offer.

If a significant number of Tully Shareholders sell their MSF Shares, or there is a significant number of MSF Shares held by Foreign Shareholders (resulting in a significant number of MSF Shares being sold by the nominee), the price at which MSF Shares are traded on ASX may be adversely affected.

### **(b) Less than 100% ownership**

It is possible that MSF will acquire less than 100% of the Tully Shares under the Offer. The impact on MSF of acquiring less than 100% of the Tully Shares will depend on the level of ownership acquired. MSF may not be able to implement all of its intentions for Tully if it acquires less than 100% of the Tully Shares and some of the benefits of merging MSF and Tully (as described in section 4 of this Bidder's Statement) may not be achieved.

If, after the completion of the Offer, MSF does not hold 80% or more of the voting interests in Tully (because it has waived its 80% minimum acceptance condition), Tully Shareholders who make a capital gain from their disposal of Tully Shares will be unable to elect for a rollover of that capital gain, resulting in a capital gains tax liability crystallising at the time of the sale of the Tully Shares. Rollover relief for capital gains is discussed further in section 7 of this Bidder's Statement.

### **(c) Integration risks**

The MSF and Tully businesses have previously operated independently and to some extent it is intended at this stage that they will continue to operate independently. However, it is expected there will be some opportunity for the Merged Group to achieve integration synergies in corporate and administrative areas. Achievement of these synergies will be subject to market conditions in the future.

There are a number of issues and risks associated with integrating businesses (even to the minimum extent indicated above), including the following:

- successful integration requires a commitment of management resources, which may affect the Merged Group's performance in the short to medium term;
- effective communication is critical to avoid the loss of suppliers, employees and other important stakeholders;

- integration and cultural change invariably take longer and are more problematic than foreseen; and
- growth often requires additional management resources.

The MSF Board is aware of the risks posed by merging MSF and Tully and intends to appoint key executives of both entities to manage the integration.

**(d) Minority shareholders in Tully**

If you do not accept the Offer and the Offer becomes unconditional you may, depending on the level of acceptance of the Offer, become part of a locked-in minority in Tully. In such a case, the liquidity of Tully Shares may be materially diminished.

**(e) Capital gains tax rollover relief**

If the Offer becomes unconditional and MSF acquires less than 80% of the Tully Shares, the potential capital gains tax rollover relief discussed in section 7 of this Bidder's Statement will not be available.

**(f) Potential stamp duty**

Given the proposed acquisition structure, stamp duty only becomes payable if Tully is assessed by the Office of State Revenue to be a "land rich entity". Broadly, this means that the value of land exceeds 60% of the total value of the consideration. Preliminary analysis suggests that Tully will not be a land rich entity at the date of completion of the Offer. However, there remains a risk that, at the date of acquisition, Tully will be a land rich entity and in this case stamp duty would become payable at up to 5.25% of the value of the land. If stamp duty becomes payable, this will be paid by MSF - see clause 11.3 of the Offer Terms.

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## **9 Rights attaching to MSF Shares**

### **9.1 General**

The MSF Shares which accepting Tully Shareholders will receive as consideration under the terms of the Offer are fully paid ordinary shares in MSF and will rank equally in all respects with MSF's fully paid ordinary shares that are then on issue.

The rights and restrictions attaching to MSF Shares are set out in the MSF Constitution and, in certain circumstances, are regulated by the Corporations Act, ASX Listing Rules and general law. Under section 140(1) of the Corporations Act, the MSF Constitution has effect as a contract between MSF and each member and between a member of MSF and each other member. Accordingly, if Tully Shareholders accept the Offer and are allotted MSF Shares in accordance with the Offer Terms, they will become contractually bound to comply with the MSF Constitution. However, since the MSF Shares will be credited as fully paid, no monetary liability attaches to them.

### **9.2 Summary of the MSF Constitution**

The following is a summary of the key rights and obligations attaching to MSF Shares as set out in the MSF Constitution. This summary does not purport to be exhaustive or to constitute a definitive statement of the rights and liabilities attaching to MSF Shares. Such rights involve complex questions of law arising from the interaction of the MSF Constitution and statutory and common law requirements. Tully Shareholders should seek their own advice when trying to establish their rights and obligations in specific circumstances.

A full copy of the MSF Constitution can be obtained by contacting the MSF Offer Information Line on 1300 851 394 (toll-free from within Australia) or +61 2 8280 7912 (from outside Australia).

#### **(a) Meetings and notices**

Each MSF Shareholder is entitled to receive notice of general meetings. The failure of a shareholder to receive notice of a general meeting does not invalidate any resolution passed or any act performed at the meeting.

In accordance with the Corporations Act, MSF must hold an annual general meeting at least once every calendar year, and within the period of five months after the end of MSF's financial year. The MSF Directors may, whenever they think fit, call a general meeting of the shareholders. The MSF Directors must convene a general meeting of MSF Shareholders on the written request of not less than 100 shareholders who are entitled to vote at the general meeting or a shareholder or shareholders who hold not less than five percent of the votes that may be cast at the general meeting. Shareholders with at least 5% of the votes that may be cast at a general meeting of MSF may call, and arrange to hold, a general meeting in accordance with the Corporations Act.

No business will be transacted at any general meeting of MSF Shareholders unless a quorum is present. Three shareholders, present in person, by proxy, attorney or representative constitute a quorum general meeting.

**(b) Voting**

MSF Shareholders are entitled to attend general meetings in person, by proxy, attorney or by authorised corporate representative. At a general meeting, each shareholder present in person, or by proxy, attorney or representative has one vote on a show of hands and on a poll has one vote per fully paid share they hold. The MSF Constitution provides that resolutions are to be decided on a show of hands unless a poll is demanded and the demand is not withdrawn.

If a share is held jointly and more than one of the joint holders votes in respect of that share, only the vote of the holder whose name appears first in MSF's register of members counts.

**(c) Transfer of shares**

Subject to the ASX Listing Rules, MSF Shares are transferable:

- (i) as provided by the operating rules of a prescribed "CS facility" (as defined in the Corporations Act) if applicable; or
- (ii) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

The MSF Directors may refuse to register any transfer of MSF Shares if the ASX Listing Rules permit or require MSF to do so, or where the transfer would or might be in breach of the ASX Listing Rules or a restriction agreement.

**(d) Issue of further shares**

Subject to the ASX Listing Rules, the Corporations Act and any special rights conferred on the holders of any shares or class of shares, the MSF Directors may issue shares and options in MSF.

**(e) Dividend rights**

Subject to the Corporations Act, the other provisions of the MSF Constitution and the rights of persons (if any) entitled to shares with special rights to a dividend, the MSF Board may determine that a dividend is payable and fix the amount, time and method of payment. Such dividends are divisible amongst shareholders in proportion to the amounts paid on the MSF Shares held by them.

**(f) Variation of rights**

MSF may only vary the rights attaching to a class of shares if the holders of 75% of the shares issued in that class give their written consent to the variation, or if a resolution is passed at a meeting of the holders of that class of shares allowing the variation.

**(g) Calls on shares**

Subject to the ASX Listing Rules and the Corporations Act, the MSF Directors may make calls on a shareholder in respect of any money unpaid on a share or shares. A call may be made payable by instalments.

MSF Shares issued as consideration under the Offer will be issued as fully-paid.

**(h) Winding up**

If MSF is wound up, the liquidator may, with the sanction of a special resolution of the shareholders, divide MSF's property among the shareholders and may for that purpose set a value as the liquidator considers fair and may determine how the division is to be carried out as between the shareholders.

**(i) Restricted securities**

Except as permitted by the ASX Listing Rules and ASX, restricted securities (as defined in the ASX Listing Rules) cannot be disposed of during the escrow period (as defined in the ASX Listing Rules) and MSF must not acknowledge such a disposal (including by registering a transfer).

During a breach of the ASX Listing Rules or a restriction agreement relating to restricted securities, the holder of the restricted securities is not entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

**(j) Beneficial ownership of shares**

Except as required by law, MSF is not required to recognise a person as holding any share on trust. Unless otherwise provided by the MSF Constitution or by law, MSF is not bound to recognise any equitable, contingent, future or partial right or interest in any share, except an absolute right of ownership in the registered holder.

**(k) Non-marketable parcels**

In certain circumstances, MSF may give notice to shareholders holding small parcels of shares that it proposes to sell their shares. The notice must specify a period of not less than six weeks, within which the shareholder can give MSF notice that they wish to retain their shares. If the shareholder does not respond to the notice within the notified period, MSF may sell the shares and distribute the proceeds of the sale to the shareholder.

**(l) Amendment**

The MSF Constitution may only be amended in accordance with the Corporations Act.

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## **10 Additional information**

### **10.1 MSF as a disclosing entity**

Due to the fact that MSF is offering MSF Shares as consideration for the acquisition of Tully Shares, the Corporations Act requires that this Bidder's Statement must include all information that would be required for a prospectus for an offer of MSF Shares under sections 710 to 713 of the Corporations Act. MSF does not need to issue a prospectus for the Offer of the MSF Shares as the Offer is occurring under a takeover bid.

MSF is a disclosing entity (as defined in section 111AC of the Corporations Act) for the purposes of section 713 of the Corporations Act and, as such, is subject to regular reporting and disclosure obligations. Specifically, like all listed companies, MSF is required to continuously disclose to the market any information it has which a reasonable person would expect to have a material effect on the price or the value of MSF Shares.

MSF Shares have been quoted on the ASX during the 12 months prior to the date of this Bidder's Statement. For this reason, MSF is only required to disclose information in this Bidder's Statement that would usually be required where its shares have been continuously quoted securities.

In general terms, where MSF Shares are continuously quoted securities this Bidder's Statement is only required to contain information in relation to the effect of the Offer on MSF and the rights and liabilities attaching to the MSF Shares. It is not necessary to include general information in relation to all of the assets and liabilities, financial position and performance, profits and losses or prospects of MSF unless such information has been excluded from a continuous disclosure notice in accordance with the ASX Listing Rules and it is information:

- that investors and their professional advisers would reasonably require for the purposes of making an informed assessment of MSF's assets and liabilities, financial position, performance, profits and losses or prospects; and
- the information relates to the rights and liabilities attaching to the MSF Shares.

Information that is already in the public domain has not been reported in this Bidder's Statement other than that information which is considered necessary to make this Bidder's Statement complete.

MSF, as a disclosing entity under the Corporations Act, states that:

- (a) it is subject to regular reporting and disclosure obligations;
- (b) copies of documents lodged with ASIC in relation to MSF (not being documents referred to in section 1274(2)(a) of the Corporations Act) may be obtained from, or inspected at, an ASIC office; and
- (c) it will provide a copy of each of the following documents, free of charge, to any person on request during the Offer Period:
  - (i) the financial statements of MSF for the 12 months ended 30 June 2009 (being the annual financial report most recently lodged by MSF with ASIC); and

- (ii) all continuous disclosure notices given by MSF after the lodgement of that annual financial report with ASIC and before the lodgement of this Bidder's Statement with ASIC.

Requests for free copies of these documents may be made by contacting the MSF Offer Information Line on 1300 851 394 (toll-free) from within Australia or on +61 2 8280 7912 from outside Australia.

Copies of all documents lodged with ASIC in relation to MSF can be inspected at the registered office of MSF during normal office hours. MSF also has a website, [www.marysug.com.au](http://www.marysug.com.au) which includes a wide range of information on MSF (including copies of the above documents) and its activities. A list of announcements made by MSF to the ASX between 1 July 2009 and the date of this Bidder's Statement appears in Appendix 3.

## **10.2 ASIC modifications and exemptions**

ASIC has published various "Class Order" instruments providing for modifications and exemptions that apply generally to all persons, including MSF, in relation to the operation of Chapter 6 of the Corporations Act. MSF may rely on this class order relief.

MSF has relied on the modification to section 636(3) of the Corporations Act set out in paragraph 11 of ASIC Class Order 01/1543 "Takeover Bids" to include references to certain statements by MSF, Tully and other persons in this Bidder's Statement without obtaining the consent of those persons.

As required by Class Order 01/1543, MSF will make available a copy of the documents containing these statements (or relevant extracts from these documents), free of charge to Tully Shareholders who request them before the end of the Offer Period. To obtain a copy of these documents (or the relevant extracts) Tully Shareholders may contact the MSF Offer Information Line on 1300 851 394 (toll-free) from within Australia or on +61 2 8280 7912 from outside Australia.

### **Other regulatory matters**

MSF is a foreign person for the purposes of Australia's Foreign Acquisitions and Takeovers Act as a result of the approximate 23.04% shareholding of Guinness Peat Group Plc in MSF. If MSF acquires more than 15% of Tully, Tully will similarly be treated as a foreign person for purposes of the Foreign Acquisitions and Takeovers Act.

On 4 September 2009, MSF sought the approval for the Offer under the Foreign Acquisitions and Takeovers Act. Approval under the Foreign Acquisition and Takeovers Act is an Offer Condition under paragraph (b) of the Offer Conditions.

### **Appointment of nominee**

If required, MSF will seek, pursuant to section 619(3)(a) of the Corporations Act, approval from ASIC for the Nominee to be appointed in relation to the Offer on the conditions that the Nominee remains the holder of an appropriate financial services licence during the period of time necessary to complete the relevant procedure under section 619(3) and the Nominee only acts in its capacity as nominee under section 619(3) of the Corporations Act on behalf of the Ineligible Foreign Shareholders. If required, MSF will appoint the Nominee to act as nominee for the sales referred to in section 10.3.

### 10.3 Foreign shareholders

If a Tully Shareholder is (or is acting on behalf of) a resident of a jurisdiction other than Australia, its external territories or New Zealand, or the address shown in Tully's register of members is a place outside Australia, its external territories or New Zealand, or a Tully Shareholder is acting on behalf of such a person, then they are considered a **Foreign Shareholder**.

In respect of a Foreign Shareholder, unless MSF otherwise determines that:

- (a) it is lawful and not unduly onerous and not unduly impracticable to make the Offer to them and to issue them with MSF Shares on acceptance of the Offer; and
- (b) it is not unlawful for them to accept the Offer by the law of the relevant place outside Australia and its external territories or New Zealand,

then they are an **Ineligible Foreign Shareholder**, and they will not be entitled to receive MSF Shares as consideration for their Tully Shares.

If you are an Ineligible Foreign Shareholder and you accept the Offer, MSF will, upon appointment of the Nominee:

- arrange for the issue to the Nominee of the number of MSF Shares to which you and all other Ineligible Foreign Shareholders would have been entitled but for clause 2.2 of the Offer Terms; and
- cause the Nominee to offer for sale those MSF Shares within five Business Days after the end of the Offer Period in such manner, at such price and on such other terms and conditions as are determined by the Nominee; and
- pay to them the amount ascertained in accordance with the formula in clause 5.8 of the Offer Terms.

Notwithstanding anything else contained in this Bidder's Statement, MSF is not under any obligation to spend any money or undertake any action, in order to satisfy itself of the eligibility of Foreign Shareholders to receive MSF Shares.

### 10.4 Consents

This Bidder's Statement contains statements made by, or statements based on statements made by, each of the persons named below. Each of the persons named below has consented to the inclusion of:

- (a) each statement it has made; and
- (b) each statement which is based on a statement it has made,

in this Bidder's Statement in the form and context in which those statements appear.

Role	Consenting parties
Corporate adviser	Baron Partners
Legal adviser	Mallesons



Role	Consenting parties
Registry	Link
Accounting and tax adviser	PwC

Each person named in this section 10.4 as having given its consent to the inclusion of a statement or to being named in this Bidder's Statement:

- does not make, or purport to make, any statement in this Bidder's Statement or any statement on which a statement in this Bidder's Statement is based other than, in the case of a person referred to above as having given their consent to the inclusion of a statement, a statement included in this Bidder's Statement with the consent of that person; and
- to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Bidder's Statement, other than a reference to its name and, in the case of a person referred to above as having given their consent to the inclusion of a statement, any statement or report which has been included in this Bidder's Statement with the consent of that party.

## 10.5 Disclosure of fees or benefits received by certain parties

Except as set out in this Bidder's Statement, no person named in this Bidder's Statement as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Bidder's Statement holds, or held at any time during the last two years, any interest in:

- the formation or promotion of MSF;
- property acquired or proposed to be acquired by MSF in connection with its formation or promotion or the Offer; or
- the Offer of MSF Shares.

Except as set out in this Bidder's Statement, no person has paid or agreed to pay an amount and no person has given or agreed to give any benefit to any person named in this Bidder's Statement as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Bidder's Statement for services provided in connection with the formation or promotion of MSF or the Offer.

Mallesons has acted as legal adviser to MSF in relation to the Offer. Mallesons is entitled to professional fees in accordance with its normal time-based charges. MSF estimates that it will pay Mallesons approximately \$225,000 (excluding GST) in connection with the Offer.

PwC has acted as auditor of, and accounting and taxation adviser to, MSF. PwC is entitled to professional fees in accordance with its normal time-based charges. MSF estimates that it will pay PwC approximately \$50,000 (excluding GST) in respect of taxation services and approximately \$65,000 (excluding GST) in respect of accounting and related services in connection with the Offer.

Baron Partners has acted as corporate adviser to MSF in relation to the Offer. For its services, Baron Partners will be entitled to a completion fee, payable only if the Offer becomes unconditional and closes. Under those circumstances, MSF would pay Baron Partners \$350,000 (excluding GST).

Link is MSF's share registry and has been engaged by MSF to assist with certain aspects of the Offer, including facilitating the despatch of this Bidder's Statement to Tully Shareholders and the operation of the MSF Offer Information Line. MSF estimates that it will pay Link approximately \$35,000 (excluding GST) for these services as well as fees for its services as MSF's share registry.

#### **10.6 Costs and expenses**

All costs and expenses of the preparation and circulation of this Bidder's Statement and the Offer, and all transfer duty or brokerage charges payable on transfer of your Tully Shares will be paid by MSF.

#### **10.7 Expiry date**

No MSF Shares will be issued on the basis of the Offer contained in this Bidder's Statement after the date which is 13 months after the date of this Bidder's Statement.

#### **10.8 Governing law**

This Bidder's Statement and Offer and any contract that results from your Acceptance of the Offer are governed by the laws in force in Queensland.

#### **10.9 Other material information**

Except as disclosed in this Bidder's Statement, there is no other information that is:

- (a) material to the making of a decision by a Tully Shareholder whether or not to accept the Offer; and
- (b) known to the MSF,

and has not previously been disclosed to Tully Shareholders.

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## 11 Glossary

### 11.1 Definitions

The following defined terms are used throughout this Bidder's Statement unless the contrary intention appears or the context requires otherwise:

**ACCC** means the Australian Competition and Consumer Commission.

**Acceptance** means the act of completing and signing the Acceptance Form and lodging it to an addresses as indicated under clause 5.3 of the Offer Terms before the end of the Offer Period.

**Acceptance Form** means the form of acceptance and transfer accompanying the Offer or any replacement or substitute acceptance form provided by or on behalf of MSF.

**AEST** means Australian Eastern Standard Time.

**Announcement Date** means 27 August 2009, being the date of announcement of the Offer.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means the Australian Securities Exchange or ASX Limited ACN 008 624 691 (being the operator of the Australian Securities Exchange), as the context requires.

**ASX Listing Rules** means the official listing rules of ASX and any other rules of ASX which are applicable while the relevant entity is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Baron Partners** means Baron Partners Limited.

**Bidder's Statement** means this document, being the statement of MSF under Part 6.5 Division 2 of the Corporations Act relating to the Offer.

**Business Day** means a day on which banks are open for general banking business in Brisbane, Australia (not being a Saturday, Sunday or public holiday in that place).

**DRP** means MSF's dividend reinvestment plan, the key aspects of which are summarised in section 2.5 of this Bidder's Statement.

**ESP** means MSF's employee share plan, the key aspects of which are summarised in section 2.6 of this Bidder's Statement.

**FIRB** means the Foreign Investment Review Board.

**Foreign Shareholder** means a Tully Shareholder who is a foreign shareholder pursuant to section 10.3 of the Bidder's Statement.

**GPG** means Guinness Peat Group plc and its related bodies corporate.

**Ineligible Foreign Shareholder** means a Tully Shareholder who is determined by MSF to be an ineligible foreign shareholder pursuant to section 10.3 of the Bidder's Statement.

**Link** means Link Market Services Limited ABN 54 083 214 537.

**Mallesons** means Mallesons Stephen Jaques.

**Merged Group** means the MSF Group (including the Tully Group) which will exist after completion of the Offer.

**Merged Group Board** means the board of directors of the Merged Group.

**MSF** means The Maryborough Sugar Factory Limited ACN 009 658 708, a company incorporated in Australia.

**MSF Board** means the board of directors of MSF.

**MSF Constitution** means the constitution of MSF (as amended).

**MSF Directors** means the directors comprising the MSF Board.

**MSF Group** means MSF and each of its subsidiaries.

**MSF Offer Information Line** means the shareholder information line established by MSF in connection with the Offer.

**MSF Shareholders** means holders of MSF Shares.

**MSF Shares** means fully paid ordinary shares in the capital of MSF.

**Mulgrave** means The Mulgrave Central Mill Company Limited ACN 009 657 032.

**Nominee** means, if required, the entity appointed by MSF as described in section 10.2 to perform the functions set out in section 10.3 of this Bidder's Statement.

**Offer** means the offer by MSF on the Offer Terms to acquire Tully Shares (and for the avoidance of doubt includes each such offer made to an individual Tully Shareholder pursuant to that offer).

**Offer Conditions** means the conditions to the Offer, as set out in Appendix 2 to this Bidder's Statement.

**Offer Period** means the period commencing on 21 October 2009 and ending at 6.00pm (AEST) on 11 December 2009, or such later date to which the Offer has been extended.

**Offer Terms** means the terms of the Offer, as set out in Appendix 1 to this Bidder's Statement.

**Official List** means the "Official List" of the ASX.

**OPRP** means MSF's options and performance rights plan, the key aspects of which are summarised in section 2.7 of this Bidder's Statement.

**PwC** means PricewaterhouseCoopers.

**Register Date** means 14 October 2009, being the date set by MSF pursuant to section 633(2) of the Corporations Act.

**Rights** means all accretions, rights or benefits of whatever kind attaching to or arising from Tully Shares directly or indirectly after the date of this Bidder's Statement, including, but not limited to, all dividends or other distributions and all rights to receive any dividends or other distributions, or to receive or subscribe for shares, stock units, notes, bonds, options or other securities, declared, paid or made by Tully or any of its subsidiaries.

**STL** means Sugar Terminals Ltd ACN 084 059 601, a company incorporated in Australia.

**STL Shares** means fully paid ordinary shares in the capital of STL.

**Tully** means Tully Sugar Limited ACN 011 030 256, a company incorporated in Australia.

**Tully Board** means the board of directors of Tully.

**Tully Constitution** means the constitution of Tully (as amended).

**Tully Group** means Tully and each of its subsidiaries.

**Tully Shareholders** means holders of Tully Shares.

**Tully Shares** means fully paid ordinary shares in the capital of Tully.

**Unlisted MSF Options** means the options and performance rights granted under MSF's shared based payment scheme.

**VWAP** means the volume weighted average price of a security. For the purposes of this Bidder's Statement, the VWAP has been calculated to two decimal places (rounded down).

## **11.2 General Interpretation**

The following rules of interpretation apply unless the contrary intention appears or the context requires otherwise:

- (a) a reference to time is a reference to AEST time;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and conversely;
- (d) a reference to a section is to a section of this Bidder's Statement;
- (e) a gender includes all genders;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) \$, A\$ or AUD or cents is a reference to the lawful currency in Australia, unless otherwise stated;
- (h) a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;

- (i) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (j) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (k) a reference to any instrument or document includes any variation or replacement of it;
- (l) a term not specifically defined in this Bidder's Statement has the meaning given to it (if any) in the Corporations Act or the ASX Listing Rules, as the case may be;
- (m) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and individually; and
- (n) a reference to you is to a person to whom the Offer is made under Appendix 1 to this Bidder's Statement.

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## 12 Approval of Bidder's Statement

The copy of this Bidder's Statement that is to be lodged with ASIC has been approved by a unanimous resolution passed by the directors of MSF on 6 October 2009.

Signed by James Jackson of MSF in accordance with section 351 of the Corporations Act.

Dated this 7th day of October 2009.

A handwritten signature in black ink, appearing to read 'Jackson', with a stylized flourish extending from the end.

James Jackson  
Chairman

# Appendix 1 - Offer Terms

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## **1 Offer**

MSF offers to acquire all of your Tully Shares, together with all Rights attaching to them, on the following terms and conditions. This Offer relates to Tully Shares that exist or will exist at the Register Date.

You may only accept this Offer for all of your Tully Shares.

By accepting this Offer, you undertake to transfer to MSF not only the Tully Shares to which the Offer relates but also all Rights attached to those Tully Shares.

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## **2 Consideration**

### **2.1 Consideration offered**

The consideration offered is 13 MSF Shares for each Tully Share.

However, in accordance with clauses 5.10 and 5.11, the amount of consideration you receive directly from MSF may be reduced by the amount or value of any Rights attaching to Tully Shares which you (or any previous holder of your Tully Shares) receive, including any dividend declared by Tully.

### **2.2 Foreign Shareholders**

If at the time this Offer is made to you, you are a Foreign Shareholder, you will not receive MSF Shares. Instead you are offered and will receive a cash amount determined in accordance with clause 5.8.

### **2.3 Fractional entitlements**

For the avoidance of doubt, your entitlement to MSF Shares under the Offer will be calculated by multiplying the number of Tully Shares you hold as at the Register Date by 13.

If this calculation results in an entitlement to a fraction of a MSF Share, the number of MSF Shares you are entitled to pursuant to the Offer will be rounded up to the next whole number of MSF Shares. If MSF reasonably believes that a Tully Shareholder's holdings have been manipulated to take advantage of rounding up, then any fractional entitlement will be aggregated or rounded down to the next whole number of MSF Shares.

### **2.4 Distribution and entitlements**

- (a) MSF will be entitled to all distributions and entitlements declared, paid or made by Tully or which arise or accrue after the Announcement Date in respect of the Tully Shares which MSF acquires pursuant to this Offer.
- (b) If for any reason whatsoever MSF does not receive any such distributions or entitlements, MSF will, to the extent permitted by applicable law, be entitled to reduce the amount of consideration to which you would otherwise be entitled in accordance with this Offer by



the amount or value (as reasonably determined by MSF) of the distribution or entitlement. This may include reducing the number of MSF Shares to which you may otherwise be entitled.

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### **3 Offer Period**

The Offer will, unless withdrawn, remain open for acceptance during the period commencing on the date of this Offer, being 21 October 2009, and ending at 6.00pm AEST on:

- (a) 11 December 2009; or
- (b) any date to which the period of this Offer is extended in accordance with the Corporations Act,

whichever is the later.

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### **4 Official quotation of MSF Shares**

- (a) The MSF Shares offered as consideration by MSF under the Offer will be issued fully paid and will rank equally with existing MSF Shares from the date of issue.
- (b) MSF has been admitted to the Official List of ASX. Securities of the same class as those to be issued as consideration under the Offer have been granted official quotation by ASX. MSF will make an application to the ASX for admission of the MSF Shares offered as consideration under the Offer to the Official List within 7 days after the date of this Bidder's Statement. However, official quotation of securities by ASX is not granted automatically on application.
- (c) This Offer and any contract that results from your acceptance of this Offer are subject to the condition set out in section 625(3) of the Corporations Act. If that condition is not fulfilled, any contract that results from your acceptance of this Offer will be automatically void.
- (d) The condition set out in section 625(3) of the Corporations Act is not a defeating condition for the purposes of the Corporations Act, and is not of the same nature as the conditions set out in clause 6. Section 625(3) of the Corporations Act provides that this Offer cannot be freed of the condition prescribed in that section, and consequently no statement made by MSF can be taken to be a waiver of that condition.

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### **5 How to accept this Offer**

#### **5.1 Acceptance Forms**

Acceptances must be received prior to the close of the Offer Period at 6.00pm (AEST) on 11 December 2009, unless extended.

#### **5.2 All of your holding**

This Offer is for all of your Tully Shares.

#### **5.3 Acceptance procedure for Tully Shareholders**

- (a) To accept the Offer you must **complete and sign** the Acceptance Form in accordance with the instructions on it and lodge it by returning it

(together with all other documents required by the instructions on the Acceptance Form) to an address as indicated under clause 5.3(c) below so that your acceptance is received before the end of the Offer Period.

**(b) If some of your Tully Shares are held in a number of forms**

If some of your Tully Shares are in different holdings, your acceptance of this Offer will require action under clause 5.3(a) in relation to the separate portions of your Tully Shares.

**(c) Postal and delivery addresses**

The postal and delivery addresses for completed Acceptance Forms are as follows.

The postal address is:

Link Market Services Limited  
Tully Sugar Limited Offer  
Locked Bag A14  
SYDNEY SOUTH NSW 1235

Alternatively you may deliver the Acceptance Form and any associated documents in person to:

Link Market Services Limited  
Tully Sugar Limited Offer  
Level 12, 680 George Street  
SYDNEY NSW 2000

If you are a Tully Shareholder within Australia a reply paid envelope is enclosed for your convenience.

The transmission of the Acceptance Form and other documents is at your own risk.

**(d) Acceptance Form**

The Acceptance Form which accompanies this Offer forms part of it. Subject to clause 5.5, the requirements on the Acceptance Form must be observed in accepting this Offer in respect of your Tully Shares.

**5.4 Power of attorney, deceased estate**

When accepting this Offer, you should also forward for inspection:

- (a) if the Acceptance Form is executed by an attorney, a certified copy of the power of attorney; and
- (b) if the Acceptance Form is executed by the executor of a will or the administrator of the estate of a deceased Tully Shareholder, a certified copy of the relevant grant of probate or letters of administration.

**5.5 When acceptance is complete**

Acceptance of this Offer will not be complete until the completed Acceptance Form has been received at one of the addresses set out in clause 5.3 above and the requirements of this clause have been met, provided that:

- (a) MSF may in its sole discretion waive any or all of those requirements at any time; and
- (b) where such requirements have been complied with in respect of some but not all of your Tully Shares, MSF may, in its sole discretion, deem your acceptance of this Offer complete in respect of those Tully Shares for which the requirements have been complied with but not in respect of the remainder.

## **5.6 When consideration is paid**

Subject to clauses 5.8 and 5.9, if the contract resulting from your acceptance of this Offer becomes unconditional, MSF will provide the consideration to which you are entitled on acceptance of this Offer on or before the earlier of:

- (a) one month after the date this Offer is validly accepted by you or, if this Offer is subject to a defeating condition when accepted, within one month after this Offer or the contract resulting from your acceptance of this Offer becomes unconditional; and
- (b) 21 days after the end of the Offer Period.

## **5.7 Issue of MSF Shares**

The obligation of MSF to allot and issue any MSF Shares to which you are entitled under this Offer will be satisfied:

- (a) by MSF entering your name on the register of members of MSF; or
- (a) if your name is entered into the issuer sponsored subregister of MSF, by MSF no later than five Business Days after your name is entered in the register of members of MSF, despatching or procuring the despatch to you, by pre-paid post to your address as shown on the Acceptance Form or such other address as you may notify to MSF in writing before despatch, a holding statement in accordance with ASX Listing Rule 8.6. If your Tully Shares are held in joint names and those names are entered into the issuer sponsored subregister of MSF, the holding statement will be issued in the name of, and forwarded to, the holder whose name appears first in Tully's register of members.

## **5.8 Payments to Ineligible Foreign Shareholders**

If you accept the Offer and are an Ineligible Foreign Shareholder, MSF will, upon appointment of the Nominee:

- (a) arrange for the issue to the Nominee of the number of MSF Shares to which you and all other Ineligible Foreign Shareholders would have been entitled but for clause 2.2;
- (b) cause the Nominee to offer for sale the MSF Shares within 5 Business Days after the end of the Offer Period in such manner, at such price and on such other terms and conditions as are determined by the Nominee;
- (c) cause the Nominee to pay to you the amount ascertained in accordance with the formula:

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Total Nominee Securities

Where:

“**Net Proceeds of Sale**” means the amount which is received by the Nominee upon the sale of all MSF Shares under this clause 5.8 less brokerage and other sale expenses;

“**MSF Shares**” means the number of MSF Shares which would but for clause 2.2 otherwise have been allotted to you; and

“**Total Nominee Securities**” means the total number of MSF Shares allotted to the Nominee under this clause 5.8;

- (d) you will receive your share of the proceeds of this sale in Australian currency;
- (e) payment will be made by cheque posted to you at your risk by ordinary mail at the address provided on your Acceptance Form; and
- (f) under no circumstances will interest be paid on your share of the proceeds of this sale, regardless of any delay in remitting these proceeds to you.

## 5.9 Where additional documents are required

Where the Acceptance Form requires additional documents to be given with your acceptance (such as a certified copy of either a power of attorney or any of a grant of probate or letters of administration):

- (a) if the documents are given with your acceptance, MSF will provide the consideration in accordance with clause 5.6;
- (b) if the documents are given after acceptance and before the end of the Offer Period and this Offer is subject to a defeating condition at the time that MSF is given the documents, MSF will provide the consideration by the end of whichever period ends earlier:
  - (i) one month after the contract resulting from your acceptance of this Offer becomes unconditional; and
  - (ii) 21 days after the end of the Offer Period; or
- (c) if the documents are given after acceptance and before the end of the Offer Period and this Offer is unconditional at the time that MSF is given the documents, MSF will provide the consideration by the end of whichever of the following periods ends earlier:
  - (i) one month after MSF is given the documents; and
  - (ii) 21 days after the end of the Offer Period; or
- (d) if the documents are given after the end of the Offer Period, MSF will provide the consideration within 21 days after the documents are given; but if at the time MSF is given the documents, the contract resulting from

your acceptance of this Offer is still subject to one or more of the Offer Conditions referred to in paragraph (g) (“prescribed occurrences”) of Appendix 2, MSF will provide the consideration within 21 days after that contract becomes unconditional.

If you do not provide MSF with the required additional documents within one month after the end of the Offer Period, MSF may, in its sole discretion, rescind the contract resulting from your acceptance of this Offer.

#### **5.10 Where MSF is entitled to any Rights**

If MSF becomes entitled to any Rights as a result of your acceptance of this Offer, it may require you to give MSF all documents necessary to vest those Rights in MSF. If you do not give those documents to MSF, or if you have received the benefit of those Rights, MSF may deduct from the consideration otherwise due to you the amount (or value, as reasonably assessed by MSF) of those Rights in accordance with clause 5.11.

#### **5.11 Rights generally**

If:

- (a) you have (or any previous holder of your Tully Shares has) received the benefit of any Rights (whether in respect of non-cash benefits or otherwise); or
- (b) you are (or any previous holder of your Tully Shares is) entitled to receive the benefit of any Rights under the terms that provide for or otherwise apply to those Rights (for example, if the Right is to receive a dividend, if you are the registered holder of the share at the specified time for determining those entitled to the dividend); or
- (c) your Tully Shares were issued (or otherwise came into existence) on or after the record date in respect of any Rights to Tully Shareholders,

then:

- (d) in the case of Rights to non-cash benefits, MSF may deduct the value (as reasonably assessed by MSF) of such Rights from any consideration otherwise payable to you; or
- (e) in the case of Rights to cash benefits, MSF may deduct the amount of such Rights from any consideration otherwise payable to you.

If MSF does not, or cannot, make such a deduction, you must pay such value or amount to MSF.

#### **5.12 Clearances for offshore residents**

If, at the time of acceptance of this Offer, you are resident in or of a place outside Australia, you will not be entitled to receive any consideration under this Offer until all requisite authorities or clearances of the Reserve Bank of Australia (whether under the Banking (Foreign Exchange) Regulations or otherwise), or of the Australian Taxation Office, have been obtained.

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## **6 Conditions of this Offer**

### **6.1 Offer Conditions**

This Offer and the contract that results from acceptance of this Offer are subject to fulfilment of the Offer Conditions set out in Appendix 2.

### **6.2 Nature of Offer Conditions**

Each of the Offer Conditions:

- (a) constitutes and will be construed as a separate, several and distinct condition;
- (b) is a condition subsequent with the exception of the Offer Condition specified in paragraph (b) (“Foreign Acquisitions and Takeovers Act”) of Appendix 2, which is a condition precedent - any contract resulting from acceptance of this Offer will not become binding unless and until the Offer Condition in paragraph (b) (“Foreign Acquisitions and Takeovers Act”) of Appendix 2 is fulfilled; and
- (c) until the expiration of the Offer Period (or in the case of the Offer Conditions referred to in paragraph (g) (“prescribed occurrences”) of Appendix 2, until three Business Days after the end of the Offer Period) will be for the benefit of MSF alone and may be relied upon only by MSF.

### **6.3 Foreign Acquisitions and Takeovers Act**

The Offer Condition specified in paragraph (b) (“Foreign Acquisitions and Takeovers Act”) of Appendix 2 is a condition precedent. Any contract resulting from acceptance of this Offer will not become binding unless and until the condition in paragraph (b) (“Foreign Acquisitions and Takeovers Act”) of Appendix 2 is fulfilled. MSF intends not to waive this condition.

### **6.4 Effect of breach or non-fulfilment**

The breach or non-fulfilment of any of the Offer Conditions does not, until the end of the Offer Period, prevent a contract arising to acquire your Tully Shares resulting from your acceptance of this Offer but, if at the end of the Offer Period (or, in the case of the Offer Conditions in paragraph (g) (“prescribed occurrences”) of Appendix 2, at the end of three Business Days after the end of the Offer Period), in respect of any Offer Condition:

- (a) MSF has not declared this Offer (and it has not become) free from that Offer Condition; and
- (b) that Offer Condition has not been fulfilled,

all contracts resulting from the acceptance of the Offer and all acceptances that have not resulted in binding contracts are void. In such a case, MSF will return the Acceptance Form together with all documents to the address shown on the Acceptance Form

### **6.5 Reasonable endeavours in relation to Offer Conditions**

MSF will:

- (a) use its reasonable endeavours to procure that each of the Offer Conditions is satisfied; and

- (b) not do or omit to do anything which may cause a breach of any Offer Condition.

## **6.6 MSF may decide Offer is free from all or any of the Offer Conditions**

Apart from the Offer Conditions specified in paragraph (b) (“Foreign Acquisitions and Takeovers Act”) of Appendix 2 to this Bidder’s Statement, MSF may at any time at its sole discretion but in compliance with section 650F and section 630 of the Corporations Act, declare the Offer free from all or any of the Offer Conditions by notice in writing to Tully:

- (a) in the case of the Offer Conditions referred to in paragraph (g) (“prescribed occurrences”) of Appendix 2 - not later than three Business Days after the end of the Offer Period; or
- (b) in any other case - not later than seven days before the end of the Offer Period.

## **6.7 Date for giving notice on status of Offer Conditions**

The date for giving a notice on the status of the Offer Conditions as required by section 630(1) of the Corporations Act is 3 December 2009, subject to variation in accordance with section 630(2) of the Corporations Act in the event that the Offer Period is extended.

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# **7 Effect of acceptance**

## **7.1 Revocation of acceptance**

Once you have accepted this Offer, you will be unable to revoke your acceptance and the contract resulting from your acceptance will be binding on you. In addition, you will be unable to withdraw your acceptance of this Offer or otherwise dispose of your Tully Shares, except as follows:

- (a) if, by the times specified in clause 7.2, the Offer Conditions have not all been fulfilled or waived, then this Offer will automatically terminate and your Tully Shares will be returned to you; or
- (b) if the Offer Period is varied in a way that postpones for more than one month the time when MSF has to meet its obligations under the Offer and, at that time, this Offer is subject to one or more of the Offer Conditions, then you may be able to withdraw your acceptance in accordance with section 650E of the Corporations Act.

## **7.2 Times**

The relevant times for the purposes of clause 7.1(a) are:

- (a) in the case of the Offer Conditions referred to in paragraph (g) (“prescribed occurrences”) of Appendix 2 - three Business Days after the end of the Offer Period; and
- (b) in the case of all other Offer Conditions - the end of the Offer Period.

### 7.3 Your agreement

By signing and returning the Acceptance Form, or otherwise accepting this Offer, you will be deemed to have:

- (a) irrevocably authorised MSF to alter the Acceptance Form on your behalf by:
  - (i) inserting correct details of your Tully Shares (including details of a parcel of Tully Shares required by clause 10.4(b));
  - (ii) filling in any blanks remaining on the Acceptance Form; and
  - (iii) rectifying any errors in, and omissions from, the Acceptance Form,

as may be necessary to make the Acceptance Form a valid acceptance of this Offer and to enable registration of the transfer of your Tully Shares to MSF;

- (b) irrevocably accepted this Offer in respect of all your Tully Shares despite any difference between that number and the number of Tully Shares shown on the Acceptance Form;
- (c) agreed to the Offer Terms and, subject to the Offer Conditions being fulfilled or waived, agreed to transfer to MSF all of your Tully Shares;
- (d) represented and warranted to MSF, as a condition of the contract resulting from your acceptance of this Offer, that at the time of acceptance and at the time of transfer to MSF:
  - (ii) you have paid to Tully all amounts which are due for payment in respect of your Tully Shares; and
  - (iii) all of your Tully Shares are fully paid and free from all mortgages, charges, liens and other encumbrances of any nature; and
  - (iv) you have full power and capacity to sell and transfer those Tully Shares;
- (e) on this Offer or any takeover contract becoming unconditional:
  - (i) irrevocably appointed MSF and each of its directors from time to time severally as your agent and attorney on your behalf to:
    - (A) attend and vote in respect of your Tully Shares at all general meetings of Tully;
    - (B) at MSF's discretion, pay MSF, or any other party, all or part of any amounts owed to MSF contemplated by these Offer Terms;
    - (C) receive from Tully or any other party, and retain, any share certificates which were held by Tully, or any other party, whether pursuant to the terms of any employee incentive scheme (including, without limitation, any employee share scheme) or otherwise; and



- (D) sign all documents (including an instrument appointing one of MSF's directors as a proxy in respect of any or all of your Tully Shares and any application to Tully for a replacement certificate in respect of any share certificate which has been lost or destroyed) and resolutions relating to your Tully Shares, and generally to exercise all powers and rights which you may have as a Tully Shareholder and perform such actions as may be appropriate in order to vest good title in your Tully Shares in MSF, and to have agreed that, in exercising such powers, any such director is entitled to act in MSF's interests as the beneficial owner and intended registered holder of your Tully Shares;
- (ii) agreed not to vote in person at any general meeting of Tully or to exercise (or purport to exercise) in person, by proxy or otherwise, any of the powers conferred on the MSF Directors by 7.3(e)(i)(A);
- (iii) irrevocably authorised MSF to direct Tully to pay to MSF, or to account to MSF for, all Rights in respect of your Tully Shares, subject to MSF accounting to you for any such Rights received by MSF if this Offer is withdrawn or any contract resulting from your acceptance to this Offer is rescinded or rendered void; and
- (iv) irrevocably authorised MSF to notify Tully on your behalf that your place of address for the purposes of serving notices upon you in respect of your Tully Shares is the address specified by MSF in the notification;
- (f) represented and warranted to MSF that you are not an Ineligible Foreign Shareholder, unless otherwise indicated on the Acceptance Form; and
- (g) acknowledged and agreed that if you indicate on the Acceptance Form that you are an Ineligible Foreign Shareholder, or if MSF believes that you are an Ineligible Foreign Shareholder, MSF will arrange for any MSF Shares otherwise issuable to you to be issued and sold, and the net proceeds to be remitted to you, as described in clause 5.8.

By accepting this Offer you will be deemed to have agreed to the matters set out in clauses 7.3(a) to 7.3(g) (inclusive) above.

MSF may at any time deem the receipt of a signed Acceptance Form to be a valid acceptance of this Offer even though you omit to include your share certificate(s) (if any) or there is not compliance with any one or more of the other requirements for acceptance but, if MSF does so, MSF is not obliged to make the consideration available to you until all of the requirements for acceptance have been met.

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## **8 Withdrawal**

MSF may withdraw unaccepted Offers at any time with the written consent of ASIC and subject to the conditions (if any) specified in such consent.

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## **9 Variation**

MSF may vary this Offer in accordance with the Corporations Act.

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## **10 Acceptances by transferees and nominees**

### **10.1 Who may accept this Offer**

During the Offer Period:

- (a) any person who is able to give good title to a parcel of your Tully Shares may accept (if they have not already accepted an offer in the form of this Offer) as if an offer on terms identical with this Offer has been made to them; and
- (b) any person who holds one or more parcels of Tully Shares as trustee, nominee, or otherwise on account of another person, may accept as if a separate and distinct offer had been made in relation to:
  - (i) each of those parcels; and
  - (ii) any parcel they hold in their own right.

### **10.2 Holding shares**

A person is taken to hold Tully Shares if the person is, or is entitled to be registered as, the holder of those Tully Shares.

### **10.3 Holding shares on trust or as a nominee**

A person is taken to hold Tully Shares on trust for, as nominee for, or on account of, another person if they:

- (a) are entitled to be registered as the holder of particular Tully Shares; and
- (b) hold their interest in the Tully Shares on trust for, as nominee for, or on account of, that other person.

### **10.4 Effective acceptance**

An acceptance of an offer under clause 10.1(b) is ineffective unless:

- (a) the person who holds on account of another person, gives MSF a written notice stating that the Tully Shares consist of a separate parcel; and
- (b) the acceptance specifies the number of Tully Shares in that parcel.

References in this Offer to your Tully Shares will be treated to relate to that separate parcel.

### **10.5 Notice of acceptance**

A notice under clause 10.4(a) of these terms must be made in writing.

A person may, at the one time, accept for two or more parcels under this clause as if there had been a single offer for a separate parcel consisting of those parcels.

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## **11 Other matters**

### **11.1 Notices and other communications**

Subject to the Corporations Act, a notice or other communication given by MSF to you in connection with this Offer shall be deemed to be duly given if it is in writing and:

- (a) is delivered at your address as recorded on the register of members of Tully or the address shown in the Acceptance Form; or
- (b) is sent by pre-paid ordinary mail, or in the case of an address outside Australia by pre-paid airmail, to you at either of those addresses.

### **11.2 Return of documents**

If:

- (a) this Offer is withdrawn after your Acceptance Form has been sent to MSF, but before it has been received; or
- (b) for any other reason MSF does not acquire the Tully Shares to which your Acceptance Form relates,

you may request MSF by notice in writing to despatch (at your risk) your Acceptance Form together with all other documents forwarded by you, to such address as you may nominate. Where such address is inside Australia, the documents will be despatched by pre-paid ordinary mail. Where such address is outside Australia, the documents will be despatched by pre-paid airmail.

### **11.3 Costs and expenses**

All costs and expenses of the preparation, despatch and circulation of the Bidder's Statement and this Offer and all stamp duty payable in respect of a transfer of Tully Shares in respect of which this Offer is accepted, will be paid by MSF.

### **11.4 Foreign laws**

This Offer is not registered in any jurisdiction outside Australia (unless an applicable foreign law treats it as registered as a result of the Bidder's Statement being lodged with ASIC). It is your sole responsibility to satisfy yourself that you are permitted by any foreign law applicable to you to accept this Offer.

### **11.5 Governing law**

This Offer and any contract resulting from acceptance of it is governed by the law in force in Queensland, Australia.

## Appendix 2 - Offer Conditions

The Offer and any contracts resulting from acceptance of the Offers is subject to fulfilment of the following Offer Conditions:

- (a) **(minimum acceptance)** during, or at the end of, the Offer Period, the number of Tully Shares in which MSF and its associates together have relevant interests is at least 80% of all the Tully Shares;
- (b) **(Foreign Acquisitions and Takeovers Act)** prior to the end of the Offer Period, the Treasurer of the Commonwealth of Australia consents under the Foreign Acquisitions and Takeovers Act 1975 (“**Act**”) to the proposed acquisition by MSF of Tully and the Treasurer is taken to have so consented:
  - (i) if MSF receives written advice from or on behalf of the Treasurer to the effect that the acquisition of Tully is not inconsistent with the Australian Government’s foreign investment policy or is not objected to under the Act; or
  - (ii) if notice of the proposed acquisition of Tully is given to the Treasurer and the Treasurer has ceased to be empowered to make any order under Part II of the Act in relation to the proposed acquisition because of lapse of time;
- (c) **(amendments to Tully Constitution)** before the end of the Offer Period, the Tully Constitution is amended so that article 2 is deleted;
- (d) **(Trade Practices Act)** prior to the end of the Offer Period, the ACCC not advising in writing that it proposes to take action in relation to the Offer for the purposes of Section 50 of the Trade Practices Act 1974;
- (e) **(distributions)** that during the period commencing on the Announcement Date and ending at the end of the Offer Period, Tully does not make or declares or announce an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (f) **(Merged Group)** no Tully Shareholder who validly accepts the Offer will acquire a relevant interest in the Merged Group of greater than 19.9%; and
- (g) **(prescribed occurrences)** that during the Offer Period, none of the following events happen:
  - (i) Tully converts all or any of its shares into a larger or smaller number of shares;
  - (ii) Tully or a subsidiary resolves to reduce its share capital in any way;
  - (iii) Tully or a subsidiary:

- (A) enters into a buy-back agreement; or
- (B) resolves to approve the terms of a buy-back agreement under section 257C(1) or section 257D(1) of the Corporations Act;
- (iv) Tully or a subsidiary issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option;
- (v) Tully or a subsidiary issues, or agrees to issue, convertible notes;
- (vi) Tully or a subsidiary disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (vii) Tully or a subsidiary charges, or agrees to charge, the whole, or a substantial part, of its business or property;
- (viii) Tully or a subsidiary resolves to be wound up;
- (ix) a liquidator or provisional liquidator of Tully or of a subsidiary is appointed;
- (x) a court makes an order for the winding up of Tully or of a subsidiary;
- (xi) an administrator of Tully or of a subsidiary is appointed under sections 436A, 436B or 436C of the Corporations Act;
- (xii) Tully or a subsidiary executes a deed of company arrangement; or
- (xiii) a receiver or a receiver and manager is appointed in relation to the whole, or a substantial part, of the property of Tully or of a subsidiary.

## Appendix 3 - MSF announcements to the ASX since 1 July 2009

Date	Price sensitive	Announcement
28/07/2009	No	Change in substantial holding from PPT
27/08/2009	Yes	MSF announces merger offer to Tully Sugar Limited
27/08/2009	Yes	Appendix 4E Preliminary Final Report - Y/E 30 June 2009
27/08/2009	No	Announcement of Results for year ended 30 June 2009
31/08/2009	No	Becoming a substantial holder
10/09/2009	No	Change in substantial holding - PPT
11/09/2009	No	Notice of Lapsed Performance Rights
30/09/2009	No	MSF Annual Report 2009

# Corporate directory

## **MSF DIRECTORS**

James A. Jackson (Chairman)  
Susan J. Palmer  
John E. Burman  
Ross A. Burney  
James F. Hesp  
William B. Moller

## **REGISTERED OFFICE**

114-116 Kent Street  
Maryborough QLD 4650  
Phone +61 7 4121 1100  
Fax +61 7 4121 1139

## **CHIEF EXECUTIVE OFFICER**

Michael J. Barry

## **COMPANY SECRETARY**

Gregory R. Clarey

## **CORPORATE ADVISER**

Baron Partners Limited  
Level 32 Deutsche Bank Place  
126 Phillip Street  
Sydney NSW 2000  
Phone +61 2 9232 5500  
Fax +61 2 9232 5300

## **AUDITORS**

PricewaterhouseCoopers  
Level 15 Riverside Centre  
123 Eagle Street  
Brisbane QLD 4000  
Phone +61 7 3257 5000  
Fax +61 7 3257 5999

## **LEGAL ADVISERS**

Mallesons Stephen Jaques  
Level 30 Waterfront Place  
1 Eagle Street  
Brisbane QLD 4000  
Phone +61 7 3244 8000  
Fax +61 7 3244 8999

## **SHARE REGISTRY (NOT FOR ACCEPTANCE FORMS)**

Link Market Services  
Level 19, 324 Queen St  
Brisbane QLD 4000  
Phone +61 2 8280 7454  
Fax +61 2 9287 0303

## **ACCEPTANCE FORMS**

### **By mail**

Link Market Services Limited  
Tully Sugar Limited Offer  
Locked Bag A14  
SYDNEY SOUTH NSW 1235

### **By hand**

Link Market Services Limited  
Tully Sugar Limited Offer  
Level 12, 680 George Street  
SYDNEY NSW 2000



THE MARYBOROUGH SUGAR FACTORY LIMITED

ABN 11 009 658 708



## Need help?

Contact MSF Offer Information Line

Phone 1300 851 394 (from within Australia)

Phone +61 2 8280 7912 (from outside Australia)

### A Your name

SAMPLE NAME 1  
SAMPLE NAME 2  
<SAMPLE A/C>  
SAMPLE ADDRESS 1  
SAMPLE ADDRESS 2

### Your holding

Securityholder Reference Number: 112345678910

Tully Shares held as at  
the Register Date 99,999,9999

If your holding has changed between the Register Date and time of acceptance, then write your current holding here and initial your amendments. Your acceptance will in any event apply in respect of all of your Tully Shares.

**This is an important document. If you are in doubt as to how to complete this form, please consult your financial or other professional adviser immediately.**

## Transfer and Acceptance Form

This is a personalised form for the sole use of the holder and holding recorded above.

Use this form to accept the Offer by The Maryborough Sugar Factory Limited for all of your shares in Tully Sugar Limited. You should read the entire Bidder's Statement carefully before completing this form. Capital words used in this form have the meanings given to them in the Bidder's Statement.

### B You must return your Acceptance Form to accept the Offer

If you correctly sign and return this form you will be deemed to have accepted the Offer in respect of **ALL** of your Tully Shares (even if different from the number specified above) on the Offer Terms and subject to the Offer Conditions. To be an effective Acceptance, your form must be received by Link Market Services Limited by the end of the Offer Period which is 6.00pm (AEST) on 11 December 2009 (unless extended).

**Offer Consideration** – 13 MSF Shares for each Tully Share.

To accept the Offer you must either:

- sign and return this Acceptance Form by mail to the mailing address shown overleaf; or
- sign and return this Acceptance Form by hand delivery at the hand delivery address shown overleaf.

### C Contact details

Please provide your contact name and telephone number in case we need to speak to you about this Acceptance Form.

Telephone Number where you can be contacted during business hours

Contact Name (PRINT)

### D You must sign this form for your instructions in this Acceptance Form to be executed

I/We, the person(s) named above, accept the Offer in respect of all my/our Tully Shares and hereby agree to transfer to The Maryborough Sugar Factory Limited all my/our Tully Shares for the consideration specified in the Offer, and on the terms and conditions of the Offer as set out in the Bidder's Statement. By submitting this form I/we declare that all details and statements made by me/us are complete and accurate.

Shareholder 1 (Individual)

Sole Director & Sole Company Secretary

Shareholder 2 (Individual)

Secretary/Director (delete one)

Shareholder 3 (Individual)

Director

**The directors of The Maryborough Sugar Factory Limited reserve the right to make amendments to this form where appropriate.**

**Please refer overleaf for further important instructions**

REGISTRY USE ONLY



SRN/HIN



Holding

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## Further Important Instructions

To accept the Offer, you must complete and return this Acceptance Form in accordance with the instructions in this form.

For further information please refer to the Bidder's Statement dated 7 October 2009 which accompanies this Acceptance Form. Capitalised terms used in this form have the same meanings given to them in the Bidder's Statement.

By submitting this form, you agree to take the number of MSF Shares that may be allotted to you pursuant to the Offer on the Offer Terms and subject to the Offer Conditions set out in the Bidder's Statement (or any supplementary bidder's statement) and the MSF Constitution and you agree to be bound by the MSF Constitution.

### Completion instructions

- A**
- **Please check the front page** to ensure that your name and address are correct. If incorrect, please write your correct details and initial the amendments.
  - **Please note** your consideration will be issued in the names as they appear on the Tully Sugar Limited register.
- D**
- **Please sign this Acceptance Form** in the places for signature(s) set out on the front page and in accordance with the following instructions:
    - **Joint Shareholders:** If your Tully Shares are held in the names of more than one person, all of those persons must sign this Acceptance Form.
    - **Corporations:** This Acceptance Form must be signed by either two directors or a director and a company secretary. Alternatively, where the company has a sole director and, pursuant to the Corporations Act, there is no company secretary, or where the sole director is also the sole company secretary, that director may sign alone. Alternatively, a duly appointed attorney may sign.
    - **Powers of attorney:** If this Acceptance Form is signed under a power of attorney, please attach a certified copy of the power of attorney to this Acceptance Form when you return it. If this Acceptance Form is signed under Power of Attorney, the attorney declares that he/she has no notice of revocation of the Power of Attorney.
    - **Deceased Estates:** All the executors and administrators must sign this Acceptance Form. When you return this Acceptance Form, please attach it to a certified copy of probate, letters of administration or certificate of grant accompanied (where required by law for the purpose of transfer) by a certificate of payment of death or succession duties and (if necessary) a statement in terms of Section 1071B(9)(b)(iii) of the Corporations Act.

Information you supply on this Acceptance Form will be used by The Maryborough Sugar Factory Limited and Link Market Services Limited for the primary purpose of processing your acceptance of the Offer and to provide you with the consideration payable under the Offer. This information may be disclosed to The Maryborough Sugar Factory Limited's professional advisers, securities brokers, printing and mailing providers and other third parties in connection with the Offer. If you fail to supply this information, your acceptance may not be processed and you may not receive the consideration payable. You have rights to obtain access to the personal information which you have supplied. Please see Link Market Services Limited's privacy policy on its website [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au).

### Lodgement instructions

- Mail or deliver completed Acceptance Form(s) and any other documents required by the above instructions to:

**Mailing Address**

Link Market Services Limited  
Tully Sugar Limited Offer  
Locked Bag A14  
SYDNEY SOUTH NSW 1235

or

**Hand Delivery**

Link Market Services Limited  
Tully Sugar Limited Offer  
Level 12, 680 George Street  
SYDNEY NSW 2000

- A reply paid envelope is enclosed for use within Australia.

**Your acceptance must be received by no later than the end of the Offer Period, which is 6.00pm (AEST) on the last day of the Offer Period, being 11 December 2009 (unless extended).**

**If you have any questions about the terms of the Offer or how to accept, please call the MSF Offer Information Line on the following numbers:**

**within Australia: 1300 851 394  
outside Australia: +61 2 8280 7912**