

Email: geoff.lasscock@rsmi.com.au

1 June 2011

Report to Creditors of:

Coastal Limestone Pty Ltd (In Liquidation)
ACN 119 369 854 ("the Company")
ABN 71 119 369 854

1. Introduction

- 1.1. I was appointed Official Liquidator of the Company on 24 November 2010 pursuant to an order of the Federal Court of Australia in proceedings WAD 162 of 2010.
- 1.2. The application to wind up the Company was made on 17 June 2010 by the Deputy Commissioner of Taxation (**Deputy Commissioner**), as the major creditor of the Company.
- 1.3. My investigations into the Company's affairs and the conduct of its sole director have been completed as required by the Corporations Act 2001 (**Act**). Further details are set out below.
- 1.4. Most material assets of the Company have been realised. It is not known whether a dividend will be paid to unsecured creditors. Details are provided in the report below.

2. Meeting of Creditors

- 2.1. A meeting of creditors of the Company will be held on Monday, 20 June 2011 at the offices of RSM Bird Cameron Partners, 8 St George's Terrace, Perth WA at 11.30am (WST). A formal notice of the meeting is enclosed with this report.
- 2.2. Attendance by telephone conference will be available. If you wish to attend the meeting by telephone, please contact Geoff Lasscock of this office on (08) 9261-9266 at least 24 hours prior to the meeting.
- 2.3. The balance of this report is set out under the following main headings:

Section	Details	Page
3.	Nature of Business and Trading History	2
4.	Statutory Information	2-3
5.	Report as to Affairs	3-5
6.	Investigation into Company's Affairs	5-8
7.	Dividend	8-9
8.	Report to ASIC	9
9.	Summary of Receipts and Payments	9
10.	Finalisation	9

3. Nature of the Business and Trading History

- 3.1. The Company was incorporated in Western Australia on 21 April 2006.
- 3.2. Mr Joao (John) Miguel Dos Santos was appointed sole director on incorporation and remained sole director at the date of my appointment.
- 3.3. The Company ceased trading a business as a limestone block producer and layer upon my appointment.
- 3.4. Financial statements prepared for the Company by external accountants for the financial years ended 30 June 2007 to 30 June 2010 have been provided to me. The Company did not maintain any form of accounting system. Accordingly, no financial or management accounts are available from 1 July 2010.
- 3.5. The financial performance of the Company from these records is summarised below in Table 1:

	Financial Statements			
	Year Ended 30 June 2007	Year Ended 30 June 2008	Year Ended 30 June 2009	Year Ended 30 June 2010
	\$	\$	\$	\$
Total Revenue	398,586	317,000	237,819	332,494
Total Expenses	429,452	523,431	328,167	322,430
Net Profit/(Loss)	(30,866)	(206,431)	(90,348)	10,064
Accumulated Profit /(Loss)	(30,866)	(237,297)	(327,645)	(317,581)

Table 1: Summary of Financial Performance

- 3.6. A detailed statement of financial performance (profit and loss statements) is annexed as Annexure "A".
- 3.7. As shown above, the Company accumulated substantial losses from incorporation to 30 June 2010. Ultimately, those losses could not be sustained from its resources and the financial support of its director.

4. Statutory Information

- 4.1. The corporate database maintained by the Australian Securities and Investments Commission (**ASIC**) as at the date of my appointment recorded the current and former directors and secretaries as detailed below in Table 2:

Name	Address	Position	Commenced	Ceased
Dos Santos, Joao Miguel (Known as John)	8 Dionysus Terrace, Atwell	Sole Director	21/04/2006	Current

Table 2: Summary of Company Officers

- 4.2. The ASIC database records that the issued capital of the Company was \$10, being ten (10) fully paid ordinary shares held jointly by Joao Miguel Dos Santos and Sandra Maria Dos Santos.
- 4.3. Six (6) charges over property of the Company were registered in the ASIC database, as summarised below in table 3:

Chargee	Charge Number	Charge Type	Date Created	Date Registered
National Australia Bank	1314607	Fixed & Floating Charge	6/06/2006	19/06/2006
Esanda Finance Corporation Limited	1315469	Fixed Charge	1/06/2006	21/06/2006
Westpac Banking Corp	1335216	Fixed Charge	11/07/2006	8/08/2006
Westpac Banking Corp	1373148	Fixed Charge	25/10/2006	2/11/2006
Westpac Banking Corp	1373570	Fixed Charge	25/10/2006	3/11/2006
Esanda Finance Corporation Limited	1425788	Fixed Charge	14/07/2008	16/07/2008

Table 3: Summary of Registered Charges

5. Report as to Affairs

- 5.1. A director of a company under external administration must make out, verify and submit a report to a liquidator as to the affairs of the company (**RATA**). The report must disclose the assets and liabilities of the company and the director's estimated realisable value of the assets, as at the date of winding up of the company.
- 5.2. In a RATA submitted by the director on 17 December 2010, the director stated that the book value of the assets of the Company were \$69,200, comprising plant and equipment. He did not provide an estimated realisable value.
- 5.3. The director also stated in the RATA that the Company owed its unsecured creditors \$161,256 and had secured liabilities of \$39,000.
- 5.4. Whilst not stated in the RATA, a deficiency of \$131,056 arises from the values declared by the director.
- 5.5. From my investigations, I estimate the deficiency to be \$392,303, excluding the costs of the winding up. The variance is largely as a result of the director failing to state that the Company was indebted to National Australia Bank (**NAB**) to the extent of \$242,606 (by demand on 2 December 2010).
- 5.6. A further explanation of the asset and liability classes, including variances between my estimated realisable values and those of the directors begins at paragraph 5.10 below.
- 5.7. A summary of the RATA and my investigation findings are summarised in Table 4 below:-

	Paragraph Reference	Director's Stated Book Value \$	Liquidator's Estimated Realisable Value \$
Assets			
Plant and Equipment	5.10	69,200	48,680
Total Assets		69,200	48,680
Liabilities			
Unsecured Creditors	5.19	161,256	163,103
Secured Creditors	5.20	39,000	277,880
Total Liabilities		(200,256)	(440,709)
Estimated Total Deficiency		(131,056)	(392,303)

Table 4: Summary of RATA and Liquidator's Estimated Realisable Values

Assets

Plant and Equipment

- 5.10 My estimate represents the proceeds from sale of certain items of the Company's plant and equipment which were sold to the director pursuant to a Sale of Assets Deed which I entered into with the director on 9 December 2010.
- 5.11 The sale consideration was based upon a valuation of the assets undertaken under my instructions by a licensed valuer on 29 November 2010.
- 5.12 I disclaimed the remaining items of plant and equipment because the value of the items was less than the debt claimed by secured creditors holding fixed charges over the assets.

Loans to Director

- 5.14 The Company's financial statements do not record any loans to directors.
- 5.15 However, from my investigations I identified numerous payments totalling \$23,295 from the Company's bank account which were made to the director, or for the benefit of the director, and which did not appear to be accounted for in the financial records of the Company.
- 5.16 I therefore issued a demand on the director for repayment of this amount as a debt due to the Company.
- 5.17 The director has disputed my claim and has indicated he will provide evidence that the payments were declared as wages and income tax paid.
- 5.18 At the date of this report I have not received such information.

Unsecured Creditors

- 5.19 I have received claims totalling \$163,103, comprising:-

5.19.1	Deputy Commissioner	\$155,457
5.19.2	BP- Motorcharge	\$ 5,256
5.19.3	Forklift & Bobcat Services	\$ 2,175
5.19.4	Goodall & Co	<u>\$ 215</u>
.		\$163,103

Secured Creditors

5.20 Comprising:

- 5.20.1 An overdraft debt to NAB of \$242,606. The facility was secured by a fixed and floating charge over all of the Company's assets and undertakings and a mortgage over the director's Atwell residence;
- 5.20.2 Following settlement for the sale of the Atwell property the NAB applied \$119,138 of the settlement proceeds in reduction of the Company's overdraft facility, reducing the Overdraft Limit to \$140,000 against which there is a residual debt of \$138,661. The residual debt is secured by the fixed and floating charge plus a registered mortgage over a property in the name of the Director and his wife.
- 5.20.3 NAB has not exercised its rights under the fixed and floating charge. However, the director and his wife are known to have recently sold their Atwell residence over which NAB held a registered mortgage.
- 5.20.4 Equipment loans at Westpac and Esanda totalling \$35,274. The loans were secured by goods mortgages (registered as fixed charges at the ASIC) over two skid steer loaders and a Nissan Patrol 4WD vehicle respectively.

6. Investigations into Company's Affairs**Cause of Failure**

- 6.1. The director has stated that the Company's failure was caused by a substantial bad and doubtful debt which severely restricted working capital.
- 6.2. Based on my investigations, I believe the main reasons for the Company's failure were;
 - 6.2.1. Undercapitalisation from incorporation;
 - 6.2.2. Poor management of accounts receivable;
 - 6.2.3. Inadequate cash flow; and
 - 6.2.4. Trading losses.

Books and Records

- 6.3. I have recovered all of the available books and records of the Company.

6.4. Pursuant to Section 286(1) of the Act, a company is required to maintain sufficient books and records which:-

6.4.1. Correctly record and explain transactions and the financial position; and

6.4.2. Enable true and fair financial statements to be prepared and audited.

From my investigations, I consider the Company generally complied with the Act.

6.5. A summary of the Company's financial position extracted from the available records of the Company is summarised below in Table 5:

	Financial Statements			
	Year Ended	Year Ended	Year Ended	Year Ended
	30 June	30 June	30 June	30 June
	2007	2008	2009	2010
	\$	\$	\$	\$
Current Assets	0	0	0	28,841
Current Liabilities	(58,877)	(249,028)	(380,352)	(408,153)
Working Capital Surplus / (Deficiency)	(58,877)	(249,028)	(380,352)	(379,312)
Non-Current Assets	185,706	171,528	149,313	106,714
Non-Current Liabilities	(157,694)	(159,793)	(96,600)	(44,977)
Net Asset / (Liabilities)	(30,865)	(237,293)	(327,639)	(317,575)

Table 5: Summary of Financial Position

6.7 A detailed statement of financial position of the Company (balance sheets) is annexed as Annexure "B".

Insolvent Trading Analysis

6.8 The Act definition of "insolvent" is determined with reference to the term "solvent" which is defined as "when a company is able to pay all its debts as and when they fall due." By definition, a company is insolvent when it is unable to meet its debts as and when they fall due.

6.9 Pursuant to Section 588G of the Act, a director of a company has a duty to prevent a company from incurring a debt when a company is insolvent or there are reasonable grounds to suspect a company is or would become insolvent.

6.10 Pursuant to Section 588M of the Act, a liquidator (and in some circumstances a creditor) may recover from a director, losses suffered by creditors from transactions entered into at a time when a company was insolvent.

6.11 In order to establish a case for insolvent trading against a director, a liquidator must establish that a director or a reasonable person in the director's position ought to have been aware that the company was insolvent at a particular time.

- 6.12 Further, in assessing whether there is an insolvent trading case against directors, a liquidator needs to consider:
- 6.12.1 Whether a date of insolvency can be established prior to the relevant date (being the date of filing of the winding-up application with the Court);
 - 6.12.2 The strength of defences available to directors; and
 - 6.12.3 If established, the directors' financial capacity to meet claims for insolvent trading.
- 6.13 The tests of insolvency include the balance sheet test (the net asset position of the Company) and the cash flow test (whether the Company can pay its debts as and when they fall due). The cash flow test is the true test of insolvency.
- 6.14 Working capital is representative of a company's capacity to meet its current liabilities by the application of its current assets. A shortfall in current assets to meet current liabilities is an indicator of cash flow insolvency. A decline in the working capital position is often a pre-cursor to insolvency.
- 6.15 The financial statements of the Company show that it was cash flow insolvent from incorporation in that it had a deficiency of working capital.
- 6.16 However, the Company had access to an overdraft facility at NAB with a limit of \$250,000 from which it had a source of funds to meet its debts as they fell due. That source of funds effectively ceased from or around 6 July 2009 when NAB began to return drawings from the overdraft account.
- 6.17 In the absence of any alternative source of funds, I therefore consider the Company to have been insolvent on or around 6 July 2009.
- 6.18 The Company continued to incur debts after that date, particularly debts due to the Deputy Commissioner arising from Business Activity Statements (**BAS**). The debt to the Deputy Commissioner rose from \$117,557 on 6 July 2009 to \$155,547 as at the date of my appointment, an increase of \$37,900.
- 6.19 As the director was responsible for rendering BAS returns and was aware of the Company reaching the limitation of its overdraft facility, he ought to have known or had reason to suspect that the Company could not pay the debts being incurred to the Deputy Commissioner from 6 July 2009.
- 6.20 I therefore consider I have an insolvent trading claim against the Director in the amount of \$37,900 and I have issued a demand on the Director for payment of this sum to the Company.
- 6.21 The director has not denied the claim but has claimed he is financially unable to satisfy the demand, or any settlement thereof.
- 6.22 I have asked him to provide evidence of his financial position in order that I may assess the commerciality of pursuing my insolvent trading claim. I will only pursue the claim if it is in the best interests of creditors.

Voidable Transactions

- 6.23 Pursuant to Part 5.7B of the Act, a liquidator may void certain transactions of a company in respect of money, property or other benefits for the benefit of creditors. Such voidable transactions may consist of:-
- 6.23.1 Unfair Preference (section 588FA) – these are transactions between the Company and a creditor resulting in the creditor receiving more than the creditor would receive if the transactions were set aside and the creditor claimed for this amount in the winding-up. Any such voidable transactions must arise in the period beginning six months prior to the relation back day. For the purposes of the Company, the relation back day is [date].
 - 6.23.2 Uncommercial Transactions (section 588FB) – these are transactions entered into that a reasonable person would not have entered into having regard to the benefit to the Company, the detriment to the Company and the benefit to the other parties involved in the transaction. In this instance, it is not necessary for a creditor to be a party to the transaction. Such transactions are only voidable if the Company was insolvent at the time of the transaction.
 - 6.23.3 Insolvent Transactions (section 588FC) – these transactions are unfair preferences or uncommercial transactions (refer above) entered into when the Company was insolvent or became insolvent as a result of entering into the transaction. Only unfair preferences which have occurred within six months of the relation back day and uncommercial transactions which have occurred within two years of the commencement of the liquidation can be recovered.
 - 6.23.4 Unfair Loans to a Company (section 588FD) – representing loans made to the Company where interest or other charges on the loan were extortionate. These transactions can be recovered regardless of when they were entered into.
 - 6.23.5 Unreasonable Director-Related Transactions (section 588FDA) – being transactions that a reasonable person in the Company's circumstances would not have entered into having regard to the benefit to the Company (and other parties to the transaction) and the detriment to the Company. These transactions may be voided if they occurred within four years of the relation back day.
 - 6.23.6 Related Party Transactions (section 588FE (4)) – representing insolvent transactions (unfair preferences or uncommercial transactions) with a related party within four years prior to the relation back date.
 - 6.23.7 Transactions Entered into for the Purpose of Defeating Creditors (section 588FE (5)) – representing insolvent transaction (unfair preferences or uncommercial transactions) entered into for the purpose of defeating, delaying or interfering with the rights of creditors within ten years prior to the commencement of the liquidation.
- 6.24 Prima facie I have identified an unfair preference claim of \$27,073. The claim will arise if no dividend is paid, or if a dividend is paid and the quantum of that dividend is less than approximately 14c in the dollar.

7 Dividend

- 7.1 A dividend will only be payable to unsecured creditors if, and when, the NAB confirms it has no further claim upon the Company's assets and it discharges its fixed and floating charge.
- 7.2 The quantum of any dividend will be dependent on;
1. the extent of the claims of unsecured creditors, including any claim that might arise as a consequence of the NAB debt being partially or wholly discharged by a third party or as a result of the realisation of third party security; and,
 2. the costs, charges and expenses of the winding up.
- 7.3 I will inform creditors further upon receiving further information from NAB.

8 Report to ASIC

- 8.1 In accordance with the Act, I submitted a report to the ASIC. The ASIC has decided not to take any further action, based upon the information I provided to it.

9 Summary of Receipts and Payments

- 9.1 A summary of the Liquidator's Receipts and Payments for the period 24 November 2010 to 23 May 2011 is attached as Annexure "C".
- 9.2 It shows that I have received \$53,779 and paid \$3,756 in expenses, leaving cash at bank of \$50,023.

10 Finalisation

- 10.1 I will proceed to finalise the winding up of the Company on final resolution of my claims against the director, any claim of NAB as secured creditor and payment of any dividend to unsecured creditors.

Should you have any queries, please contact Geoff Lasscock on telephone (08) 9261 9266.

Yours faithfully



MARK CONLAN
Official Liquidator

Statement of Financial Performance

	Financial Statement	Financial Statement	Management Accounts	Management Accounts
	30/06/07	30/06/08	30/06/09	30/06/10
	\$	\$	\$	\$
Income:				
Sales	398,586	317,000	237,819	332,494
Gross Profit	398,586	317,000	237,819	332,494
Expenses				
Accountancy Fees	2,250	200	200	3,735
Advertising	1,768	433	197	136
Bank Charges	1,850	1,881	5,990	3,760
Borrowing expenses	739			
Contractors, sub-contractors	138,988	39,888	11,141	53,709
Depreciation	44,569	62,124	46,382	33,274
Directors fees	4,126	23,451	11,000	
Donations	1,437	1,536	1,419	1,548
Filing fees		200	482	212
Hire of Plant	2,662	22,010	436	3,090
Insurance	963	7,673	2,333	1,350
Interest	2,361	11,482	19,119	19,223
ATO Fees & Charges			11,306	17,168
Internet	137			
Materials	2,783	7,119	2,374	5,215
MV Expenses				
- Fuel & Oil	32,248	33,474	20,548	25,189
- Interest	20,772	17,011	2,950	7,296
- Regn & Insurance	10,553	2,944	1,816	1,694
- Repairs & maintenance	9,449	16,857	9,234	17,498
Postages		21	40	
Printing & Stationary	345	449	587	450
Protective clothing	1,258	22	176	300
Repairs & Maintenance	4,919	1,853	40	121
Salaries	17,890	134,511	90,506	61,790
Employee expenses				
- Super contributions	1,784			
- Training	423	1,054		
- Uniforms				
Sundry or General Expenses	112			1,021
Telephone	9,157	10,080	5,098	3,184
Tools	2,130	1,512	650	450
Wages	113,779	125,646	84,143	61,017
Total Expenses	429,452	523,431	328,167	322,430
Operating Profit/(Loss)	(30,866)	(206,431)	(90,348)	10,064
Accumulated Profits/(Losses)	(30,866)	(237,297)	(327,645)	(317,581)

Statement of Financial Position

	Financial Statement	Financial Statement	Financial Statement	Financial Statement
	30/06/07	30/06/08	30/06/09	30/06/10
	\$	\$	\$	\$
Current Assets:				
Cash at Bank				2
Trade Debtors				28,839
Total Current Assets	0	0	0	28,841
Current Liabilities:				
Bank overdraft	46,371	193,358	251,586	251,389
Trade Creditors				
ATO	12,506	55,670	128,766	156,764
Total Current Liabilities	58,877	249,028	380,352	408,153
Working Capital Ratio	0.00	0.00	0.00	0.07
Working Capital Surplus / (Deficiency)	(58,877)	(249,028)	(380,352)	(379,312)
Non-Current Assets:				
Plant & Equipment	182,466	168,288	146,869	105,066
Other			2,444	1,648
Borrowing Expenses	3,240	3,240		
Goodwill -				
Total Non-current Assets	185,706	171,528	149,313	106,714
Non-Current Liabilities:				
Creditors				
Hire Purchase	157,694	157,793	96,600	44,977
Directors loans		2,000		
Total Non-current Liabilities	157,694	159,793	96,600	44,977
Net Assets/(Liabilities)	(30,865)	(237,293)	(327,639)	(317,575)

Coastal Limestone Pty Ltd (In Liquidation)
ACN 119 369 854

Official Liquidator's Summary of Receipts and Payments
From 24 November 2010 to 23 May 2011

RECEIPTS	\$
Plant & Equipment	44,255
Hire of Plant & Equipment	4,200
Interest Received (pursuant to sale of assets deed)	541
Bank Interest	35
GST collected	4,612
Sundry Income (Landgate registration fee recovered)	135
	<u>53,779</u>
PAYMENTS	
Bank Charges	7
Petitioning Creditor's Costs	1,036
Liquidator's Expenses	2,713
	<u>3,756</u>
	<u>50,023</u>
Cash at Bank	<u><u>50,023</u></u>