

Our Ref: RP/TB/ACN 092 745 330 –Report to Creditors

28 August 2014

REPORT TO CREDITORS

Dear Sir/Madam,

RE: **ACN 092 745 330 Pty Ltd (In Liquidation)** (“SXP2”)
formerly “SX Projects NSW Pty Ltd”
ACN: 092 745 330

I advise that I was appointed Official Liquidator of SXP2 on 30 September 2013 pursuant to an Order of the Supreme Court of New South Wales on the application of Full Field Cleaning Pty Ltd (“petitioning creditor”).

The purpose of this Report is to give creditors an account as to the conduct of the winding up of SXP2 to date and to provide notice of a meeting of creditors to be held at the offices of Smith Hancock Chartered Accountants, Level 4, 88 Phillip Street, Parramatta NSW 2150 on **Friday, 12 September 2014 at 10:00am.**

For ease of reference, this Report is set out under the following headings:

1. Official Liquidator’s Declaration of Independence, Relevant Relationships & Indemnities
2. Dividend to Creditors
3. Statutory Information
4. History of Company and Reasons for Failure
5. Report as to Affairs (“RATA”) and Asset & Liabilities
6. Books, Records and Financial Affairs
7. Investigation and Report to the Australian Securities & Investments Commission (“ASIC”)
8. Creditor Funding
9. Official Liquidator’s Receipts & Payments and Estimated Future Receipts & Payments
10. Meeting of Creditors

Information sheets for directors, employees, creditors and shareholders are available on the Firm’s website <http://www.smithhancock.com.au/sitePage.cfm?code=resources>.

1. OFFICIAL LIQUIDATOR’S DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS & INDEMNITIES

I enclose as **Annexure “A”** my Declaration of Independence, Relevant Relationships & Indemnities (“DIRRI”). In summary, neither I nor my partner or staff have had any prior relationships with SXP2 or its director. I have not received an indemnity for my remuneration or any other costs in relation to SXP2.

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2. DIVIDEND TO CREDITORS

At the present time, there have been insufficient realisations in the liquidation to enable a dividend to any class of creditor.

Should sufficient funds be realised, in accordance with Section 556(1)(b) of the *Corporations Act, 2001 (Cth)* ("the Act") the petitioning creditor's costs in respect to the application for the winding up order will be paid in priority to all other unsecured creditor claims.

3. STATUTORY INFORMATION

A search of SXP2 records maintained on the Australian Securities & Investments Commission ("ASIC") database as at the date of my appointment as Official Liquidator, disclosed the following:

Date of Incorporation	8 May 2000	
Registered Office	Building B, Level 3 33 Saunders Street PRYMONT NSW 2009	
Principal Place of Business	Building B, Level 3 33 Saunders Street PRYMONT NSW 2009	
Director	Appointed	Resigned
Vince Battaglia*	28 February 2013	6 September 2013
Lewis Yazbek	26 September 2012	28 February 2013
Andrew Peter Box	26 September 2012	28 November 2012
Richard Yazbek	24 August 2012	26 September 2012
Andrew Peter Box	8 May 2000	24 August 2012
Lewis Yazbek	8 May 2000	24 August 2012

* Although Mr Battaglia is only recorded as being a director of SXP2 from 28 February 2013 onward, I have evidence to suggest that Mr Battaglia may have acted as a "de facto" director of SXP2 from at least 21 March 2012. A "de facto" director of a company is an individual who, although not listed as a director on the ASIC database as a director, acts in the position of, and with the authority of a director.

Secretary		
Lewis Yazbek	26 September 2012	26 February 2013
Richard Yazbek	24 August 2012	26 September 2012
Lewis Yazbek	8 May 2000	24 August 2012

Current Shareholders	Type	No.	Paid
Vince Battaglia	Ordinary	1	\$1.00

Auditor None Appointed

Current Registered Charges

Secured Party	Date Registered	Security Interest
S.E. Rentals Pty Ltd	20 March 2013	PMSI
Eagle Scaffolding (NSW) Pty Ltd	24 May 2012	Fixed
Access Hardware Pty Ltd	22 June 2012	PMSI
Royal Wolf Trading Australia Pty Ltd	23 June 2012	PMSI
Thorn Australia Pty Ltd	6 September 2012	Fixed
Druin Pty Ltd	18 October 2012	PMSI
BOQ Finance (Aust) Limited	19 March 2013	PMSI

I have written to the above creditors with registered charges requesting details relating to their security, however, to date, I have not received any response to my enquiries.

4. HISTORY OF COMPANY AND REASONS FOR FAILURE

During the course of this Report I use the abbreviations SXP1, SXP2 and SXP3. The reason for doing so is that the name SX Projects has transferred through at least three (3) separate legal entities that I am aware of as follows:

Reference	ACN	Period
SXP1	111 121 450	24 September 2004 to 1 July 2012
SXP2	092 745 330	1 July 2012 to 20 September 2012
SXP3	160 440 111	20 September 2012 to present

Note

SXP1 went into liquidation on 30 August 2013.

SXP2 went into liquidation on 30 September 2013

From the information made available to me, Mr Vince Battaglia has been the driving force behind SXP1, SXP2 and SXP3. Mr Battaglia appears on the public record from time to time as a director, but I have a number of examples of him signing documents as a director when he is not listed on the public record as a director.

On 9 September 2013, ASIC released a media release (No. 13/253MR) regarding illegal phoenix activity. ASIC defined phoenix activity as the “fraudulent act of transferring assets of an indebted company into a new company to avoid paying creditors, tax or employee entitlements”. The new company is usually operated by the same director and continues a similar business under a new structure to avoid the responsibilities to creditors.

According to ASIC common indicators of illegal phoenix activity are as follows:

- The Company fails and is unable to pay its debts;
- Directors act in a manner which intentionally denies unsecured creditors equal access to the company’s assets in order to meet and pay debts; and
- Soon after the failure of the initial company (usually within twelve (12) month), a new company commences using some or all of the assets of the former business and is

controlled by the parties related to either the management or directors of the previous entity.

In this matter:

- SXP2 has insufficient assets to pay its debts;
- All the assets of SXP2 were transferred to SXP3 so SXP2 is unable to pay its creditors and not all creditors were treated consistently; and
- A new entity, SXP3, is carrying on the same (or similar) business, with the same (or similar) name whilst using SXP2's contracts and the same employees, having acquired the intellectual property for nominal consideration (this is discussed below).

SXP1

Based on my preliminary enquiries, I provide below a summary on SXP1:

- SXP1 was originally incorporated in September 2004;
- The original directors of SXP1 were Mr Lewis Yazbek, Richard Yazbek, Craig Erwin, Andrew Box and Vince Battaglia;
- SXP1 was incorporated to provide construction services within the Southern Cross Constructions Group of Companies ("the Group") for projects under \$20million;
- In or around May 2009, SXP1 entered into what is known as the Limited Partnership and continued the construction services mentioned above; and
- In or about August 2011, SXP1 ceased to trade.

SXP2

SXP2, originally named as SX Interiors, was incorporated on 8 May 2000 and was a wholly owned subsidiary of Southern Cross Constructions (NSW) Pty Ltd ("SCCNSW"). It originally was established to do hail damage repair work. After that work had been completed, SXP2 ceased to trade and became dormant.

In or about August 2011, SXP2 obtained from SXP1, the rights to complete certain construction contracts that were in progress with SXP1. In consideration for these rights, SXP2 agreed to pay an ongoing licence fee of \$50,000 per month to SXP1 until the last construction contract was completed. During this time (August 2011 to October 2012), SXP2, continued to operate within the Group.

I have been provided with very little by way of books and records for this transfer from SXP1. As such, I am unable to identify, whether SXP2 obtained any intellectual property or other assets through this transaction.

In addition, SXP2 commenced contracts of its own, providing building construction services.

On 1 July 2012, SXP2 began using the name SX Projects.

Whilst operating within the Group, SXP2 was also grouped for tax purposes. This meant that all entities within the Group had their tax obligations combined, with the Head company, SCCNSW, remitting one return on behalf of all entities within the Group. Once SCCNSW entered Voluntary Administration, and subsequently liquidation, the liability for the entities

within the Group for the Australian Taxation Office ("ATO") debt crystallised on a joint and several basis. The ATO has made a claim of \$978,869 in the winding up of SXP2. Due to outstanding lodgements, I do not believe this is to be the full liability to the ATO.

Moser Bland Report

On 3 October 2012, a valuation was undertaken by Moser Bland & Co, on instructions from Brenton Yates of Yates Beaggi Lawyers, the Lawyers who act for Mr Battaglia. The instructions were to "*prepare a fair market valuation of the one (1) issued fully paid ordinary share in SX Projects (NSW) Pty Ltd as at 30 June 2012*" ("the Moser Bland Report"). That valuation concluded that the value of SXP2's shares was nil. Mr Battaglia paid \$1 to acquire the shares in SXP2.

In Section 7 of the Moser Bland report, the comment is made that SXP2 "*is potentially insolvent if the amount due from related entities are not collectable*".

Further down that page, Moser Bland comment "*I have received verbal advice from Brenton Yates that the amounts receivable from related parties are not collectable*".

Furthermore, Section 9 of the Moser Bland Report indicates that a valuation was also conducted using the Future Maintainable Profit ("FMP") methodology. Moser Bland comment that the FMP methodology "*is used to value the operating business of an entity*."

The results of the FMP valuation indicated that the business of SXP2 had a value of between:

- Minimum \$ 402,402
- Maximum \$1,665,402

As will be discussed further below, SXP2's business has been transferred to SXP3 via multiple transactions for nominal consideration.

I have requested from Mr Battaglia on a number of occasions an accounting for the values applied to SXP2's assets for their transfer to SXP3 (which was conducted via a number of transactions as is discussed below).

As is discussed above, I have identified a number of transactions entered into, to transfer SXP2's business to SXP3 which require further investigation. I have separated these transactions into three (3) categories, the "Optima Transaction", "Novation Transactions" and the "Assignment Transaction".

Optima Transaction

As is discussed below, the Novation Transaction relates to a transfer of five (5) construction contracts to SXP3 from SXP2. However, I have identified that one (1) contract herein referred to as the "**Killara Contract**", was not novated to SXP3.

Following a review of the progress claims made to the Receivers & Managers of **Optima Property Developments Pty Ltd** (the principal of the **Killara contract**), I have identified three (3) payments, totalling \$1,161,738.64 were made to SXP3's bank account following the cessation of trading of SXP2.

The table below summarises these payments.

Progress Claim	Dated	\$
Progress Claim 12	15 March 2013	817,593.68
Progress Claim 13	16 April 2013	255,041.33
Progress Claim 14	16 May 2013	89,103.63
Total		\$1,161,738.64

It would appear that although the contract was not novated, I believe that SXP3 undertook the construction works for SXP2, with the respective progress claims being made by SXP2 but paid to SXP3's bank account. Progress Claim 12 would undoubtedly relate to the operations of SXP2 prior to 1 March 2013. At the time SXP2 ceased to trade, there was a substantial insolvency issue facing SXP2. SXP3 has taken over a major contract of SXP2, and kept the proceeds of Progress Claims 12, 13 and 14.

Novation Transaction

The Novation Transactions consist of five (5) transactions each novating a construction contract to SXP3. The contracts are referred to in this report as follows:

- BUPA Aged Care;
- The Kingsway;
- Mandalong Project;
- Elizabeth Street; and
- Elizabeth Lodge.

Mr Battaglia claims that the above transactions all took place on or about 1 March 2013 (excluding the BUPA Baulkham Hills transaction which is purported to have taken place on 1 May 2013).

Mr Battaglia claims that four (4) construction contracts were novated on 1 March 2013 and one (1) in May 2013, however, I have identified that the actual dates differ. This is highlighted in the table below:

Contract	Date of Purported transfer	Date of Deed	Effective Date per deed
Bupa Aged Care	1 May 2013	15 May 2013	15 May 2013
The Kingsway	1 March 2013	16 July 2013	1 February 2013
Mandalong Project	1 March 2013	6 August 2013	1 January 2013
Elizabeth St	1 March 2013	9 August 2013	9 August 2013
Elizabeth Lodge	1 March 2013	29 July 2013	29 July 2013

In addition to the above, a preliminary review of the Deeds of Novation for the abovementioned Novation Transactions has identified clauses to the effect of "SXP3 accepts the past and future liabilities of the outgoing contractor under the prior contract". This leads

me to believe that SXP3 has inherited all the debts and liabilities from SXP2 for each respective contract.

I attach as **Annexure "B"** a document titled "Claims History of Novated Projects". This is a summary of the above contracts prepared by Mr Battaglia. This document provides an outline of the income and expenditure broken down per contract and the entity which was completing the contract at the time.

The Novation Transactions are discussed in greater detail in Section 7 of this Report.

I do not have sufficient information to determine the reasonableness and accuracy of the document at **Annexure "B"**.

Assignment Transaction

Attached hereto and marked **Annexure "C"** is a Deed of Assignment between SXP2 and SXP 3. I make the following comments in respect to this Deed of Assignment:

- *The Deed of Assignment "irrevocably assigns to SXP3 all right title and interest, both legal and beneficial, in its goodwill and all intellectual property rights, including the business/trading name "SX Projects", logo, trademark and phone numbers. In consideration for the above assignment and or transfer and the losses and liabilities to be assumed by SXP3 in the continuation of the SX Projects business activities, SXP2 shall pay SXP3 an amount of \$1.00 (one dollar)";*

After this assignment transaction, it would appear that there were no assets remaining in SXP2 to satisfy any debts.

Reason for Failure

In my opinion, the reasons for failure of SXP2 are as follows:

- Non recoverability of the amount owing by SXP2's largest debtor, SCCNSW (of approximately \$6m);
- Entering into the Novation Transaction caused SXP2 to be unable to generate income to repay creditors rateably;
- Entering into the Assignment Transaction removed any remaining assets of SXP2 for nominal consideration, thus leaving no assets which could have been sold to generate funds to pay creditors; and
- Poor financial control.

5. REPORT AS TO AFFAIRS ("RATA") AND ASSET & LIABILITIES

A RATA is a report prescribed by the Act to be prepared by the director/s to reflect the financial position of SXP2 as at the date of my appointment. It is required to be submitted to me within fourteen (14) days of the Order being made for the winding up of SXP2

On 28 October 2013, some two (2) months after my appointment as Official Liquidator and the date of my original request, Mr Battaglia provided me with a RATA. The summary pages of Mr Battaglia's RATA is annexed hereto and marked **Annexure "D"**.

Upon reviewing the records of SXP2, including claims made by creditors, I have identified that Mr Battaglia's RATA is incomplete and it omits a number of creditors. Mr Battaglia's RATA records a deficiency of assets over liabilities in the liquidation totalling \$2,086,579. However, my investigations have identified a deficiency totalling \$5,893,986.

5.1 Assets

As at the date of my appointment, Mr Battaglia advised me that there were no realisable assets of SXP2.

However, I have made the following recoveries during the course of the liquidation:

- \$2,464 being a refund of an overpayment made prior to my appointment of an electricity account;
- \$2,201.94 from SXP3, for a reimbursement of costs incurred with Energy Australia by SXP2, on behalf of SXP3 on the novated contracts.

In addition to the above, I have identified that SXP2 may be eligible for retentions from the Receivers & Managers of Optima Property Developments Pty Ltd (Killara Contract"), however, I have been advised that due to rectification and other offsetting claims, it is unlikely that any funds will become available to satisfy creditor claims.

Furthermore, there are serious questions as to the appropriateness and validity of the Novation Transactions, Optima Transactions and Assignment Transaction undertaken by SXP2.

5.2 Liabilities

Unsecured Creditors

From information made available to me, including the director's RATA, creditor claims and Company records I have identified creditors totalling \$5,898,652 of SXP2. This is made up as follows:

Creditor	Claim \$
ING Bank (Australia) Limited (arising from guarantees given)	2,518,425
Australian Taxation Office	1,594,402
Profile Landscape (debt disputed by Vince Battaglia)	500,000
NSW Office of State Revenue	300,670
Phoenix Aus Pty Ltd (In Liquidation)	267,326
Simplex Aluminium	250,000
RB Plumbing	200,000

Creditor	Claim \$
Protec Contracting	36,010
C & L Glass & Aluminium Pty Ltd	35,690
QLD Office of State Revenue	7,939
Harvey Air Conditioning	20,352
Full Field Cleaning Pty Ltd	17,413
Safetek	14,113
Buildtec Constructions	13,514
Aluminium Group Pty Ltd	11,880
Hanson Construction Materials	10,478
Fyrecon Building Services	7,274
Colemans Group (Aust) Pty Ltd	6,226
Energy Australia	6,178
Johnson Pilton Walker	5,500
Leyland Brothers Waterproofing	3,959
ATP Electrical Contractors	3,882
Staples	3,603
Santana E Compania	3,528
AFM Masonry	3,513
L Edwards	3,025
Transform Formwork Contractors	2,862
Conveyor & Hoist Rentals Pty Limited	2,508
EIR Group	2,356
Brown Consulting	2,280
Going Up Lifts	2,250
Full Strength Scaffolding	2,154
CTA (NSW)	2,113
Allsystems PFP	1,800
Pathfinder Systms Australia	1,672
BPM Industries Australia	1,650
BWC Concrete	1,648
Syfon Systems	1,347
S & S Construction Art	1,263
Other Unsecured Creditors *	4,205
Total Unsecured Creditors	\$5,898,652

* Consists of seven (7) Unsecured Creditors with claims below \$1,000.

Please note that I am yet to adjudicate on the above claims. Should a dividend become payable to ordinary unsecured creditors, I will call for Formal Proofs of Debt, at which time, I will adjudicate on all creditor claims.

5.3 Deficiency

The estimated deficiency in the liquidation is calculated as follows:

	\$
Total Realisations	4,666
Total Unsecured Creditor Claims	5,898,682
Surplus/(Deficiency)	\$(5,893,986)

6. BOOKS, RECORDS AND FINANCIAL STATEMENTS

During the liquidation of SXP2 I have been provided with large amounts of records. However, a review of these records leads me to conclude that should it be necessary, I would be unable to prepare true and fair financial statements to be prepared and audited. As such, I consider the directors of SXP2 may have breached Section 286 of the Act. Accordingly, I have reported this to ASIC. The records missing include:

- All email/letter correspondence;
- Management accounts;
- Accounting and financial records including general ledgers and cashbooks; and
- Bank account statements.

Mr Battaglia has alleged that email records, general ledger and other accounting records were left on a server located at the SXP2's former premises in Edgecliff. Given the directors are under a positive duty to maintain same and have failed to do so, they appear to be in breach of Section 286 of the Act.

However, I have been provided by SXP2's former accountant, copies of financial statements for the six (6) months to 31 December 2012 (ie. 1 July 2012 to 31 December 2012) and twelve (12) months for the financial year 30 June 2012 (ie. 1 July 2011 to 30 June 2012) financial statements. A summary of those financial statements can be found in the tables below:

Summary of Balance Sheet	31 December 2012 \$	30 June 2012 \$
Current Assets		
Cash	4,824,132	1,253,076
Trade and Other Receivables	6,329,715	10,149,514
Inventories (Work in Progress)	1,891,204	4,148,124
Other	2,152	22,727
Total Current Assets	\$13,047,203	\$15,573,441
Non Current Assets		
Property Plant & Equipment	93,799	71,590
Intangibles	56,104	12,634
Total Non-Current Assets	\$149,903	\$84,224

Summary of Balance Sheet	31 December 2012 \$	30 June 2012 \$
Total Assets	\$13,197,106	\$15,657,665
Liabilities		
Trade and Other Payables	12,066,031	15,623,319
Borrowings	148,794	-
Current Tax Liabilities	104,661	-
Provisions	623,327	-
Total Liabilities	\$12,942,813	\$15,623,319
Net Assets	\$254,293	\$34,346

I make the following comments in respect to the above Balance Sheet:

- As at the date of my appointment, I did not identify any cash at bank.
- The 30 June 2012 financial statements report trade and other receivables totalling \$10 million. Included in this \$10 million is a receivable totalling \$6 million from SCCNSW. On 24 October 2012, SCCNSW was placed into Voluntary Administration. I am advised that a dividend will not be paid in the liquidation of SCCNSW. A review of the financial statements raises questions regarding the accounting treatment of the writing off of the bad debt. I have written to SXP2's former accountant regarding same. To date, I am yet to receive a response to the above.
- The financial statements also records inventories (work in progress totalling \$1.9 million as at 31 December 2012). I was advised by Mr Battaglia's advisers that work in progress was transferred along with the construction contracts to SXP3.
- The financial statements also make reference to property, plant and equipment and intangible assets totalling approximately \$150,000. From the records made available to me and statements made by Mr Battaglia there is no plant and equipment owned by SXP2. The Plant & Equipment referred to office furniture and fit out previously owned by SXP2 but abandoned at SXP2's former Edgecliff premises when it was vacated.

Please find below the Profit & Loss for SXP2 for the financial years ended 30 June 2011, 30 June 2012 and six (6) months to 31 December 2012:

	6 Months Ended 31 December 2012	Year ended 30 June 2012	Year ended 30 June 2011
Summary of Profit & Loss	\$	\$	\$
Income			
Sales	33,954,511	48,412,414	-
Interest	4,191	24,139	-
Total Income	\$33,958,702	\$48,436,553	-
Cost of Sales	32,714,132	46,372,931	5,010
Gross Profit	\$1,244,570	\$2,063,622	\$(5,010)
Expenses	919,962	1,902,079	-
Net Profit Before Tax	\$324,608	\$161,543	\$(5,010)

I make the following comments in respect to the above Profit & Loss Statements:

- Profit & Loss Statements record SXP2 trading at a profit.
- As discussed above, I am unable to ascertain the accounting treatment for the writing off of the \$6 million bad debt from SCCNSW. It is unclear from the information provided how it was treated for accounting purposes in the six (6) months to 31 December 2012.

7. INVESTIGATION AND REPORTS TO THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ("ASIC")

As ordinary unsecured creditors of SXP2 will not be receiving a dividend of more than 50 cents in the dollar, I was required to submit a confidential report to ASIC pursuant to Section 533 of the Act, which I lodged on 19 December 2013.

ASIC responded requesting me to complete a Supplementary Report into the affairs of SXP2. This report was completed and lodged with ASIC on 14 August 2014.

In conducting my investigations, I held a 1½ hour meeting with Mr Battaglia and his solicitor, Brenton Yates from Yates Beagii Lawyers, with the purpose of discussing SXP2's business and financial affairs, including the Optima Transaction, Novation Transactions and Assignment Transaction. However, due to the size and complexity of the affairs of SXP2, this time proved insufficient to adequately cover all my preliminary enquiries.

At the above meeting, Mr Battaglia agreed to attend a second meeting a time for which was set, however, upon me attempting to confirm his attendance at the second meeting closer to the date, Mr Battaglia refused to attend, instead requesting I put my queries in writing.

Mr Battaglia is not co-operating with me in my enquiries. I am not required by the Act to forward all my questions in writing. Pursuant to Section 530A(2)(a) of the Act, Mr Battaglia

is required to attend on me for the purposes of providing me with such information about SXP2's business, property, affairs and financial circumstances.

7.1 Unfair Preferences (Section 588FA)

A source of recoveries often available to a Liquidator are transactions considered voidable pursuant to Section 588FE of the Act. If a transaction appears voidable, a Liquidator may commence action to recover the proceeds of the transaction in order to distribute the proceeds equally amongst creditors. Such transactions normally cover payments made to creditors within six (6) months prior to the filing of the winding up application. In this instance, the application was filed on 5 August 2013, thus the "unfair preference" provisions cover transactions as early as 6 February 2013. For a payment to be a preference, the payment must confer an advantage to the creditor above what would be received in a general distribution to creditors in a liquidation.

During my investigations into the affairs of SXP2, I identified a number of payments which were investigated to determine if they constitute an unfair preference payment. However, I have not identified evidence at this juncture that proves the creditors receiving the payment had any knowledge of insolvency. As such, at this stage I have not pursued any of these matters further.

7.2 Uncommercial Transactions (Section 588FB)

Section 588FB of the Act provides that a transaction of a company is an uncommercial transaction of SXP2 if, and only if, it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:

- (i) The benefits (if any) to the company of entering into the transaction; and
- (ii) The detriment to the company of entering into the transaction; and
- (iii) The respective benefits to the other parties to the transaction of entering into it; and
- (iv) Any other relevant matter.

The company must be insolvent at the time of the transaction or become insolvent as a result of entering into the transaction. In addition, the transaction must have occurred within two years of the appointment of the Liquidator or four years for related parties.

Section 588FG of the Act provides, in summary, that a transaction is not voidable as against certain persons if it is proved that:

- (i) The person received no benefit as a result of the transaction;
- (ii) The person received the benefit in good faith;
- (iii) The person had no reasonable grounds for suspecting that the company was insolvent at the time or would become insolvent; and
- (iv) A reasonable person in the person's circumstances would have had no such grounds for so suspecting.

From my investigations, I consider the Optima Transaction, Novation Transaction and Assignment Transaction (as is discussed in Section 4) constitute uncommercial transactions.

7.3 Unfair Loans (Section 588FD)

A loan is unfair if it is made to the company and the interest or charges relating to the loan are extortionate.

I have not identified any transactions of this nature in my investigations.

7.4 Unreasonable director-related transactions (Section 588FDA)

A transaction of a company is an unreasonable director-related transaction of the company, if and only if, the transaction is a payment, conveyance, transfer, disposition, issue of securities, incurring of an obligation made by the company to a director or close associate of a director or a person on behalf of the director or close associate and it may be expected that a reasonable person would not have entered into the transaction having regard to the benefit (if any) or detriment to the company entering into the transaction.

From the records available to me, I have identified a number of payments made to director-related parties totalling \$420,000 (approximately). These transactions require further investigation to ascertain the nature of the payments.

7.5 Transactions with the Purpose of Defeating Creditors (Section 588FE(5))

Such transactions are normally involved in the removal of assets such that they are not available to a Liquidator to meet creditors' claims in a winding up. Such action usually involves concealment and may amount to fraud.

I have not identified any such transactions that breach Section 588FE(5) of the Act, other than those discussed in Section 7.2.

7.6 Discharging a Debt of a Related Entity (Section 588FH)

I have found no evidence of a debt of a related entity having been discharged for no consideration.

7.7 Floating Charge Created within six (6) months (Section 588FJ)

A recovery may be available to a Liquidator in respect to the creation of any floating charge over the assets of the company within the six (6) months prior to the date a winding up application is filed.

I have not identified any transactions of this nature in my investigations.

7.8 Recovery from Company Officers for Insolvent Trading (Section 588G)

Pursuant to Section 588G of the Act, a director is under a positive duty to prevent a company incurring debts when there are reasonable grounds for suspecting that the company is insolvent, or would become insolvent if a transaction was entered into.

Section 588M of the Act provides that a Liquidator (or creditor with the Liquidator's consent pursuant to Section 588R) can pursue a director who has contravened Section 588G, for compensation for the loss or damage suffered because of the company's insolvency.

Pursuant to the provisions of Section 95A(1) of the Act, "solvency" is being able to pay one's debts as and when they become due and payable. This is also known as the cash flow test and is the primary test used to determine insolvent trading. The financial records available to me indicate that SXP2 was unable to pay its debts as and when they became due and payable.

Only the Court can determine if and when a company is insolvent. However, some of the major factors that may support the possibility of an insolvent trading action are as follows:

1. Continuing losses.
2. Liquidity ratios below 1.
3. Overdue Commonwealth and State taxes.
4. Unpaid superannuation
5. Poor relationship with present Bank, including inability to borrow further funds.
6. No access to alternative finance.
7. Inability to raise further equity capital.
8. Suppliers placing the company on COD, or otherwise demanding special payments before resuming supply.
9. Creditors unpaid outside trading terms.
10. Issuing of post-dated cheques.
11. Dishonoured cheques.
12. Special arrangements with selected creditors.
13. Solicitors' letters, summons[es], judgements or warrants issued against the company.
14. Payments to creditors of rounded sums which are not reconcilable to specific invoices.
15. Inability to produce timely and accurate financial information to display the company's trading performance and financial position, and make reliable forecasts

From the information available to me, it is my opinion, that SXP2 traded whilst insolvent from at least 3 October 2012 onwards.

During my investigations, I identified the following indicia of insolvency:

1. Unrecoverable loans from related parties.

As is discussed in Section 4 of this Report, SCCNSW is a debtor of SXP2 for approximately \$6 million.

On 24 October 2012 SCCNSW entered into voluntary administration and then subsequently liquidation. In addition, SCCNSW had Receivers & Managers appointed to it to realise the real property owned by SCCNSW.

The Liquidators of SCCNSW, have advised that no dividend is likely to ordinary unsecured creditors. As such, this \$6 million loan account is not recoverable.

2. Comments from Moser Bland & Co

As is discussed in Section 4, Moser Bland & Co provided a valuation of SXP2 on 3 October 2012.

The purpose of this valuation was to *prepare a "fair market valuation of the one (1) issued fully paid ordinary share in SXP2 as at 30 June 2012."*

It was identified through this valuation that:

- *The fair market value of one (1) issued fully paid ordinary share in SXP2 as at 30 June 2012 was nil;*
- *The business operated by SXP2 was valued using a future maintainable profits methodology, which resulted in the value in the range of \$402,402 and \$1,665,402; and*
- *SPX2 was also valued using a notional realisation of assets methodology resulting in a negative value of \$5,956,832.*

As discussed in Section 4 of this report, Section 7 of the Moser Bland Report comments that *"SXP2 is potentially insolvent if the amounts due from related parties is not collectable and that Mr Brenton Yates advised that ... the amounts receivable from related parties are not collectable.*

Further to the above, Moser Bland comment that *"SXP2's current trade payables significantly exceed its cash and trade debtors."*

3. Solicitors letters, demands, summonses, judgements or warrants issued against SXP2.

During my investigations, from the records made available to me, I have identified various solicitors letters, demands, summonses and judgements and warrants issued against SXP2.

A review of the creditors demands identify that the debts have been outstanding from at least June 2012.

4. Overdue taxes.

As per the list of creditors in Section 5.2, there are outstanding taxes consist of:

Creditor	\$	Period Outstanding
ATO	1,594,402.00	At Least 24 October 2012 (Voluntary Administration of SCCNSW)
NSW OSR	300,670.00	August 2012 to February 2013
QLD OSR	31,582.65	October 2012 to October 2013
Total	\$1,926,654.65	

Due to the above, I believe that Mr Battaglia has traded SXP2 whilst it was insolvent.

8. CREDITOR FUNDING

As discussed in Section 7 of this Report, I have identified various transactions that require further investigation and/or further information before I can form an opinion as to whether there are any viable causes of action for recovery of funds.

To achieve the above, I would propose to hold a public examination of various parties including Mr Vince Battaglia and his advisors. Given the lack of funds in the liquidation, I am without sufficient funds to conduct same without receiving creditor funding.

I am currently in talks with my solicitor, to ascertain the best way to commence action to recover funds for the benefit of creditors.

I invite creditors to express their interest in funding me by attending the forthcoming meeting of creditors or by advising in writing their willingness to provide me with funding within twenty-one (21) days of the date of this report.

After conducting the examinations, I will then be in a position to ascertain whether there are any available causes of actions to creditors. If there are, I will write to creditors again seeking funding to commence proceedings for recovery.

Should a creditor be willing to fund my further investigations, I advise that I would be prepared to support that creditor's application to the Court in due course for an Order under Section 564 which entitles that creditor to a priority from any recoveries made in the liquidation. This would ensure that should the proposed recoveries lead to a successful action, then any creditor willing to provide funding would receive a greater return from any distribution, than any other creditor of the same class.

9. OFFICIAL LIQUIDATOR'S RECEIPTS & PAYMENTS AND ESTIMATED FUTURE RECEIPTS & PAYMENTS

I enclose a schedule marked as **Annexure "E"**, a summary of receipts and payments made during the official liquidation to 20 August 2014.

I advise that pursuant to Section 539(5) of the Act, my six (6) monthly account of receipts and payments has been made up and lodged with ASIC.

10. MEETING OF CREDITORS

Creditors are invited to attend the meeting of creditors to be held on **Friday, 12 September 2014 at 10:00am** at the offices of Smith Hancock Chartered Accountants, Level 4, 88 Phillip Street, Parramatta NSW 2150.

At the forthcoming meeting of creditors', I will be recommending to creditors that a Committee of Inspection be formed.

The agenda of the meeting will be:

- To consider forming a Committee of Inspection;
- To receive a report of the Official Liquidator;

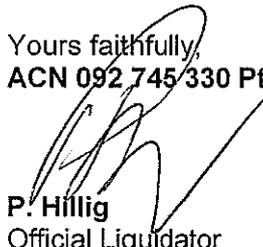
- To consider any other matter which may be properly brought before the meeting.

Enclosed please find the following:

1. Notice of Meeting (Form 529)
You do not have to attend this meeting and you can nominate someone else or the chairman to attend and vote on your behalf. Your non-attendance will not affect the validity of your claim against the company.
2. Proxy Form (Form 532)
Please note that corporate creditors need to complete a new proxy form for each meeting of creditors they attend if they wish to vote on resolutions at this meeting. Proxies may be lodged before commencement of the meeting at my office.
3. Informal Proof of Debt

If you require any further information or assistance, please contact Mr Rashnyl Prasad of my office on (02) 8844 8821.

Yours faithfully,
ACN 092 745 330 Pty Ltd


P. Hillig
Official Liquidator

Declaration of Independence, Relevant Relationships and Indemnities

**ACN 092 745 330 PTY LTD (IN LIQUIDATION)
FORMERLY "SX PROJECTS (NSW) PTY LTD"
ACN 092 745 330**

This document requires the Practitioner/s appointed to an insolvent entity to make declarations as to:

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

This declaration is made in respect of myself, my partners, Smith Hancock and related entities, being Smith Hancock Corporate Services Pty Ltd and Huge Woftam Pty Ltd ATF Smith Hancock Service Trust.

A. Declaration of Independence

I, Peter Hillig, of Smith Hancock have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Official Liquidator of ACN 092 745 330 Pty Ltd (formerly SX Projects) in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that would prevent me from accepting this appointment.

B. Declaration of Relationships

i Circumstances of Appointment

Neither I, nor my firm, have had within the preceding 24 months any meetings with ACN 092 745 330 Pty Ltd (formerly SX Projects) and its advisers.

I have had the following relationship with the Australian Taxation Office.

Name	Nature of Relationship	Reasons why not an Impediment or Conflict
Australian Taxation Office	Both partners of Smith Hancock are members of the ATO's Multi-User List of Insolvency Practitioners and receive nominations to act as Liquidator for the ATO Court winding up applications.	There are no matters which I am aware which gives rise to a conflict in this appointment. In particular, being a member of the ATO Multi-User List does not constitute a conflict as my previous relationship with the ATO has not been and is not in relation to the affairs of ACN 092 745 330 Pty Ltd and/or its officers or

Name	Nature of Relationship	Reasons why not an Impediment or Conflict
		related parties to ACN 092 745 330 Pty Ltd.

ii Relevant Relationships (excluding Professional Services to the Insolvent)

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

iii Prior Professional Services to the Insolvent

Neither I, nor my Firm, have provided any professional services to ACN 092 745 330 Pty Ltd (formerly SX Projects) in the previous 24 months.

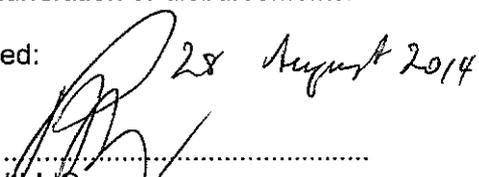
iv No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with ACN 092 745 330 Pty Ltd (formerly SX Projects), an associate of ACN 092 745 330 Pty Ltd (formerly SX Projects), a former insolvency practitioner appointed to the company or any person or entity that has a charge on the whole or substantially whole of company's property that should be disclosed.

C. Indemnities and up-front payments

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

Dated:

 28 August 2014

 P. HLLIG
OFFICIAL LIQUIDATOR

NOTE:

1. *If circumstances change, or new information is identified, I am required under Section 506A(6) of the Corporations Act and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the company's creditors.*
2. *Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.*

"Annexure B"

CLAIM HISTORY OF NOVATED PROJECTS

04-Nov-13

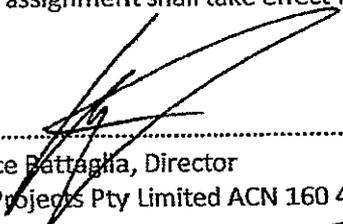
		Under Control of Southern Cross Group				Control of Vince Battaglia	
		SOUTHERN CROSS GROUP		SX PROJECTS (NSW) PTY LTD - 330 - NOV TO FEB		SX PROJECTS PTY LTD - 111	
Initial Contracting Entity	Contract Start Date	Initial Contract Sum	Claims to Novation in October 2012 (To 330)	Date Novated To SXP NSW	Claims to Novation in February 2013 (excluding Bupa April) (To 111)	Date Novated To SXP	Claims Post Novation to Date as at September 2013
ARV14	ELIZABETH LODGE	INCOME COSTS	11,018,564	5,142,474 4,319,491 822,983	24-Oct-12	2,244,074 2,494,713 -250,639	01-Mar-13 4,738,930 4,814,677 -75,747
BUP1	BUPA BAULKHAM HILLS	INCOME COSTS	22,205,775	7,106,159 5,148,521 1,957,638	24-Oct-12	10,309,756 10,785,318 -475,562	01-May-13 6,254,167 6,783,475 -529,308
KYK4	ELIZABETH ST, SYDNEY	INCOME COSTS	2,705,893	1,334,651 920,757 413,874	24-Oct-12	734,862 908,753 -173,891	01-Mar-13 982,860 853,061 129,799
QUAD16	THE MANDALONG	INCOME COSTS	11,883,561	2,042,616 729,864 1,312,752	N.A.	1,281,905 1,856,171 -574,266	01-Mar-13 7,000,414 7,201,649 -201,235
TSP1	KINGSWAY, MIRANDA	INCOME COSTS	7,154,626	1,816,850 1,290,551 526,299	N.A.	1,950,940 1,884,684 76,256	01-Mar-13 5,268,152 4,878,119 390,033
			54,968,419	34,359,162		32,986,818	48,099,012

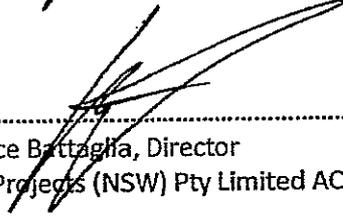
"Annexure C"

SX Projects (NSW) Pty Limited ACN 092 745 330 hereby irrevocably assigns and or transfers to SX Projects Pty Limited ACN 160 440 111 all right title and interest, both legal and beneficial, in its goodwill and all intellectual property rights, including the business/trading name "SX Projects", logo trade mark and phone numbers.

In consideration for the above assignment and or transfer and the losses and liabilities to assumed by SX Projects Pty Limited ACN 160 440 111 in the continuation of the SX Project business activities, SX Projects (NSW) Pty Limited ACN 092 745 330 shall pay to SX Projects Pty Limited ACN 160 440 111 an amount of \$1.00, the receipt of which SX Projects Pty Limited ACN 160 440 111 hereby acknowledges.

This assignment shall take effect from 1 July 2013, being the date of this document.


.....
Vince Battaglia, Director
SX Projects Pty Limited ACN 160 440 111


.....
Vince Battaglia, Director
SX Projects (NSW) Pty Limited ACN 092 745 330

Date: 1 July 2013

2 Assets and liabilities

Date specified under the relevant section as the date of report (see Directions on page 1)

3	0	0	9	1	3
[D]	[D]	[M]	[M]	[Y]	[Y]

2.1 Assets not specifically charged	Valuation (for each entry show whether cost or net book amount) \$	Estimated Realisable Values \$
(a) interest in land as detailed in schedule A	NIL	
(b) sundry debtors as detailed in schedule B	6,626,813	NIL
(c) cash on hand	NIL	
(d) cash at bank	NIL	
(e) stock as detailed in annexed inventory	NIL	
(f) work in progress as detailed in annexed inventory	NIL	
(g) plant and equipment as detailed in inventory	NIL	
(h) other assets as detailed in schedule C	NIL	
Sub Total	6,626,813	

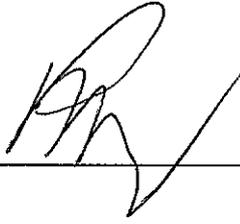
2 Continued... Assets and liabilities

	Valuation (for each entry show whether cost or net book amount) \$	Estimated Realisable Values \$
2.2 Assets subject to specific security interests, as specified in schedule D	NIL	
Less amounts owing as detailed in schedule D		
Total Assets	NIL	
Total Estimated Realisable Values	NIL	
2.3 Less payable in advance of secured creditor(s) Amounts owing for employee entitlements as detailed in schedule E	NIL	
2.4 Less amounts owing and secured by debenture or circular security interest over assets	NIL	
2.5 Less preferential claims ranking behind secured creditors as detailed in schedule F	NIL	
2.6 Balances owing to partly secured creditors as detailed in schedule G	NIL	
Total Claims	(\$)	
Security Held	(\$)	
2.7 Creditors (unsecured) as detailed in schedule H		
Amount claimed	(\$)	
2.8 Contingent assets Estimated to produce as detailed in schedule I	(\$)	NIL
2.9 Contingent liabilities Estimated to rank as detailed in schedule J	(\$)	NIL
<input type="checkbox"/> Estimated deficiency or		
<input type="checkbox"/> Estimated surplus		
<input type="checkbox"/> Subject to costs of administration or		
<input type="checkbox"/> Subject to costs of liquidation		
Share capital \$	/	
Issued \$	/	
Paid Up \$	/	

ACN 092 745 330 Pty Ltd (In Liquidation)
formerly "SX Projects NSW Pty Ltd"
ACN: 092 745 330

Official Liquidators Summary of Receipts & Payments
For the Period 30 September 2013 to 20 August 2014

RECEIPTS	Total \$
Sundry Debtors	2,201.94
Sundry Refunds	<u>2,464.00</u>
Total Receipts	4,665.94
PAYMENTS	<u>NIL</u>
Balances in Hand	4,665.94



Peter Hillig
Official Liquidator

FORM 529

CORPORATIONS ACT 2001

Subregulation 5.6.12(6)

NOTICE OF MEETING OF CREDITORS

**ACN 092 745 330 PTY LTD (IN LIQUIDATION)
TRADING AS FORMERLY "SX PROJECTS (NSW) PTY LTD"
ACN 092 745 330**

NOTICE is hereby given that a meeting of the creditors of the Company will be held at the offices of Smith Hancock Chartered Accountants, Level 4, 88 Phillip Street, Parramatta NSW 2150 on Friday, 12 September 2014 at 10:00am.

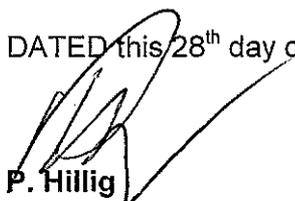
AGENDA

1. To receive and consider the progress report of the Official Liquidator as to the administration of the liquidation to date.
2. To consider a summary of Liquidator's Receipts & Payments.
3. To appoint a Committee of Inspection and, if so, who are to be the Committee Members.
4. To consider the early destruction of the books and records of the Company and of the liquidator at the conclusion of the winding up.
5. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Official Liquidator by 4.00pm on the day prior to the meeting. A corporation may only be represented by proxy or by an attorney appointed pursuant to Corporations Regulations 5.6.28 and 5.6.31A respectively or, by a representative appointed under Section 250D of the Corporations Act 2001.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the Company with the Official Liquidator.

DATED this 28th day of August 2014.


P. Hillig
Official Liquidator

Trust. Reliability. Results.

ABN 60 116 945 437
Level 4, 88 Phillip Street
PO Box 3905
Parramatta NSW 2124

Phone: 02 9689 2266
Fax: 02 9689 2888
mail@smith Hancock.com.au
www.smith Hancock.com.au



Liability limited by a scheme approved
under Professional Standards Legislation

CORPORATIONS ACT 2001

APPOINTMENT OF PROXY
CREDITORS MEETING

ACN 092 745 330 PTY LTD (IN LIQUIDATION)
ACN 092 745 330
FORMERLY "SX PROJECTS (NSW) PTY LTD"

*I/*We (1)
of
a creditor of ACN 092 745 330 Pty Ltd (formerly SX Projects), appoint (2)
.....
or in his or her absence
as *my/our *general/special proxy to vote at the meeting of creditors to be held on 12 September
2014 at 10:00am or at any adjournment of that meeting.(3)

DATED this day of 2014.

Signature

CERTIFICATE OF WITNESS

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

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

Dated:

Signature of Witness:

Description:

Place of Residence:

- * Strike out if inapplicable
(1) If a firm, strike out "I" and set out the full name of the firm.
(2) Insert the name, address and description of the person appointed.
(3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

ACN 092 745 330 PTY LTD (FORMERLY SX PROJECTS) (In Liquidation)
ACN 092 745 330
FORMERLY "SX PROJECTS (NSW) PTY LTD"

Name of creditor:

Address of creditor:

.....

ABN:

Telephone Number:

Amount of debt claimed:\$

(see note)

Amount of GST included:\$

Consideration for debt:

Whether debt secured or
unsecured:

If secured, give details of security including dates, etc:

.....

.....

.....

Balance, if any, after deducting value of security (see note):

.....

.....

.....

Creditor

(or person authorised by creditor)

Note:

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

- a. his claim has been admitted, wholly or in part, by the Official Liquidator; or
- b. he has lodged with the Official Liquidator particulars of the debt or claim, or if required, a formal proof of debt.

A secured creditor may vote (Regulation 5.6.24):

- a. for the whole of his debt provided that he surrenders his security;
- b. for the deficiency if the value of the security is less than the amount of the debt.

Proxies must be made available to the Official Liquidator.