



**ADVANCED BUILDING & CONSTRUCTION
LIMITED (IN LIQUIDATION)
("Company")**

Company number: 6473113

New Zealand Business Number: 9429046385574

**Liquidators' Third Report to Creditors and
Shareholders**

1. Introduction

Iain Bruce Shephard and Jessica Jane Kellow, Licensed Insolvency Practitioners of BDO Wellington, (Registration Numbers: IP71 and IP75 respectively) were appointed joint and several liquidators (“Liquidators”) of Advanced Building & Construction Limited (“Company”) on 5 August 2021 at 1:22pm by resolution of the creditors passed at the watershed meeting in accordance with section 241(2)(d) of the Companies Act 1993 (“the Act”).

Prior to liquidation, Iain Bruce Shephard and Jessica Jane Kellow were appointed as voluntary administrators (“Administrators”) to the Company on 31 March 2021 by GAMOS Services Limited (“GAMOS”) (as a secured creditor) in accordance with section 239K of the Act.

In addition to our statutory obligations, we are also bound by the RITANZ Code of Professional Conduct (“Code”) when carrying out all professional work relating to our appointment as Liquidators.

In accordance with section 255 of the Act we are obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six-month period. This report should be read in conjunction with all previous reports issued by the Liquidators and Administrators.

Copies of all statutory reports and notices are available at the following address: <https://www.bdo.nz/en-nz/news/2021/bdo-appointed-as-joint-administrators-of-advanced-building-construction-limited>.

2. Restrictions

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance.

We do not assume any responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

We reserve the right (but will be under no obligation) to review this report and if we consider it necessary to revise the report in the light of any information existing at the date of this report which becomes known to us after that date.

3. Background and Reasons for Liquidation

Advanced Building & Construction Limited (In Liquidation) (trading as AdBuild) (“Company” or “AdBuild”) commenced trading in 2018 with the intention of providing modular building solutions into the New Zealand market, especially in the area of social housing.

During the course of its operation, the Company had successfully completed a number of construction projects for several Government agencies, however, latterly had focused on constructing classrooms for the Ministry of Education.

Initial teething problems with design, multi-council consent processes and deployment learnings led to significant delays and cost overruns in relation to a particular Kāinga Ora project in Auckland. The flow-on effects were constructed units consuming factory space, expensive off-site storage needs, and additional factory space requirements to prevent delays to further new construction. The COVID-19 pandemic and the associated lock down trading restrictions resulted in no construction contracts being awarded to the Company for approximately four months.

In late 2020, the Company had commenced a strategic review and restructure of the organisation. As part of the review and restructure, financial projections were undertaken which indicated cashflow constraints occurring in March 2021.

In preparation of the anticipated constraint, the Company sought an informal compromise with creditors and sought to renegotiate payment terms with its secured lenders. The Company also sought additional working capital from its shareholders, which was not forthcoming. One of the secured lenders was not prepared to further negotiate the terms of the repayment of the debt and following meetings with a director of the Company and with management, served a demand on the Company. When this demand was not met, the secured lender appointed administrators to the Company on 31 March 2021.

At the time of the Administrators' appointment, the Company had 30 active construction projects.

The Administrators maintained a 'business as usual' trade-on strategy and traded the business for over four months, while conducting a process for either the sale of the business or investment into the Company. Following a comprehensive sale/investment process, the Administrators entered into a conditional agreement for the sale of the business on 20 July 2021 to Niche Modular Construction Limited ("Niche").

For the reasons fully set out in the Administrators' report to creditors dated 23 July 2021, the Administrators recommended that it was in the creditors' best interests to approve the transaction for the sale of the business to Niche and to resolve to place the Company into liquidation.

At the watershed meeting of creditors held on 5 August 2021, the creditors voted to approve the sale of the business to Niche and resolved to place the Company into liquidation.

4. Conduct of the Liquidation in the Reporting Period

4.1. Liquidation of the Company

Settlement of Transaction for the Sale of the Business to Niche

As indicated in our previous report, the transaction for the sale of the business to Niche settled on 11 August 2021.

During this reporting period, the Liquidators have continued to liaise with Niche regarding remaining matters relating to the sale of the business, including the invoicing of final "Defects Liability Period" contract receivables and un-invoiced variations. We comment on these further below.

Review of Company Records and Investigations

General Document Hosting & Management

The Liquidators have been provided with a significant quantity of Company records (including access to the Company's email servers, its accounting and costing software, and general records). Given the quantity of the information, the Liquidators have utilised the services of an external company for document hosting and management while we conduct our review and investigations.

Antecedent Transactions

A number of transactions that occurred prior to liquidation are being investigated as to whether they constitute insolvent transactions and may be subject to recovery action. The Liquidators have sought legal advice in respect of certain transactions with related-party creditors during the relevant period under the Act and are considering recovery action.

Directors Duties

The Liquidators have reviewed the directors' conduct (including that of former and/or deemed directors) during the course of the Company's operation to ensure that the directors have complied with their duties under sections 131 to 137 of the Act, especially in light of recent case law developments. As indicated in our previous reports, the Company held Directors and Officers insurance cover which did not contain an insolvency exclusion.

The Liquidators are of the preliminary view that the directors breached their duties under the Act and have put the directors' insurer on notice of a potential claim.

The Liquidators are also aware that in relation to a small number of construction contracts, the Company did not hold retentions separately on trust in the form of cash or other liquid assets as required under the retentions regime under the Construction Contracts Act 2002. The Liquidators are seeking advice as to what remedies, if any, are available to the Liquidators and/or the Company.

Foreign Recognition Order in Australia

The Liquidators applied to the Federal Court of Australia and obtained a recognition order of the liquidation of the Company in Australia under the UNCITRAL Model Law and the *Cross-Border Insolvency Act 2008* (Cth).

The purpose of the Foreign Recognition Order application was to provide the Liquidators with the statutory powers given to Australian liquidators under the *Corporations Act 2001* (Cth) in respect of statutory examinations of office-holders and key personnel resident in Australia, and assets and records located in Australia.

Inter-Company Loans

As indicated in our previous reports, the Company's records indicated inter-company loan receivables of approximately \$3.12m which were unsecured and repayable on demand. The loans were made by the Company to two Australian-registered companies that are wholly-owned subsidiaries of ModuleXC Holdings Pty Ltd (which is also the Company's shareholder). The inter-company loans comprise either cash advances or payments made on behalf of the debtors.

On AdBuild's petition, the Supreme Court of Queensland ordered that these two companies be placed into liquidation on 5 April 2022. We have liaised with the Australian liquidator regarding the financial position of these two entities, however, at this stage it appears that the companies do not have sufficient assets to allow for a meaningful (or any) distribution to unsecured creditors (of which AdBuild is the largest creditor).

General

The Liquidators advertised their appointment in the relevant publications and made a call for creditor claims. The Liquidators also directly contacted all known creditors and answered any queries they may have had. The Liquidators subsequently reviewed all completed creditor claim forms received.

The Liquidators have liaised with many parties including Inland Revenue, the Companies Office, the New Zealand Gazette and the Accident Compensation Corporation, and completed a review of all information received.

4.2. Schedule of Receipts and Payments

Attached as **Appendix 1** is a schedule of receipts and payments for the six-month period and the duration of the liquidation.

Attached as **Appendix 2** is a remuneration schedule covering the duration of the liquidation.

4.3. Asset Realisations

Surplus from Administration

At the date of the Liquidators' appointment, the balance of the funds held totalled \$745,904.44.

Net Proceeds from Sale of Business

The balance of the purchase price for the sale of the business was \$5,040,000. Following repayment of the secured creditors, the net proceeds were transferred to our trust account.

Contract Receivables

During the course of the liquidation, we have received contract receivables totalling \$4,916,764 (including GST). This amount relates to construction contract invoices issued both during the administration but not paid until liquidation and invoices issued post-settlement that are to be paid to the Company as part of the transaction for the sale of the business.

During this reporting period, the Liquidators have received contract receivables of \$709,013 (relating to both Defects Liability Period payments and approved variations). Additional invoices totalling \$135,279 have been raised but are yet to be paid as at the date of this report. We expect to invoice an additional \$410,359 of invoices relating to Defects Liability Period payments by the end of August 2022 (these invoices will be subject to direct costs incurred in remedying any defects).

The majority of the variations that were unapproved as at the date of our previous reports have been approved during this reporting period and paid to the Liquidators. These receipts are included in the \$709,013 figure above. One final unapproved variation (\$12,271 including GST) remains and will be submitted for consideration during the next reporting period.

Inland Revenue - GST Refunds

We have received Inland Revenue GST refunds totalling \$272,376 during the course of the liquidation.

4.4. Creditor Claims

Secured Creditors

As indicated in our previous reports, all secured creditors were paid in full from the proceeds from the sale of the business and the security registered over the assets has been discharged.

Preferential Creditors

Employee Holiday Pay

The holiday pay owed to employees as at the date of liquidation totalled \$84,550.06. All holiday pay was either paid out in full upon settlement or, with the employee's consent, the liability was transferred to Niche as part of the sale of the business.

Inland Revenue

Inland Revenue filed a preferential claim in February 2022 for \$818,858.58 relating to unpaid GST for the periods ended 31 January 2021 and 31 March 2021. Despite numerous requests by the Liquidators for Inland Revenue to file its claim before 24 September 2021, the claim was not submitted by that date and Inland Revenue was therefore excluded from the distribution paid in October 2021 (further details below).

Unsecured Creditors

The Liquidators fixed 24 September 2021 as the date on or before which creditors of the Company were to file claims in the liquidation. At this date, the Liquidators had received 90 claims in the liquidation totalling \$5,800,419.83.

The Liquidators reviewed these claims and the supporting documentation against Company records to confirm the validity of the claims. The Liquidators also ensured that any claims were net of duress payments made during the course of the administration (duress payments are those made in order to facilitate ongoing trading).

Following the Liquidators' claims admission process, 83 unsecured claims were admitted in the liquidation totalling \$4,286,075.96.

In October 2021, an interim distribution of 20 cents in the dollar was paid in respect of admitted unsecured claims.

Inland Revenue also filed a non-preferential unsecured claim in February 2022 for \$62,789.10 relating to penalties and interest in respect of the Company's GST liability for the periods ended 31 January 2021 and 31 March 2021. This claim was only received in February 2022 and was therefore excluded from the October 2021 distribution.

Claims unable to be adjudicated

As indicated in our previous report, the Liquidators had been unable to adjudicate a small number of claims filed in the liquidation and sought further information from the creditors in order to substantiate these claims. Allowance for these claims was made in the calculation of the interim distribution paid in October 2021 (indicated above).

During this reporting period, the Liquidators have liaised with one of these affected creditors (and their legal representatives) regarding a substantial claim filed in the liquidation relating to a purported guarantee provided by the Company. The Liquidators have sought legal advice as to the enforceability of the guarantee. Based on legal advice obtained, the Liquidators subsequently rejected the claim in the liquidation.

Further Distributions to Unsecured Creditors

Any further funds available for distribution to creditors, will first be applied to Inland Revenue's preferential claim.

Further distributions to non-preferential unsecured creditors are dependant on the collection of the balance of the Company's contract receivables (which may be subject to additional costs to complete) and/or recovery from any litigation that the Liquidators may take.

5. Statement of Affairs and Interests Statement

Attached as **Appendix 3** is the Statement of Affairs of the Company. The information provided at the date of liquidation was prepared based upon financial statements of the Company as at the date of liquidation.

The revised statement of affairs considers asset realisations, creditor distributions and other liquidation costs to date. The information provided demonstrates our best understanding of the Company's position at this time given the information provided to the Liquidators and investigations that have taken place.

Attached as **Appendix 4** is an interests statement in accordance with section 255A and 255(2)(d)(ii) of the Act.

6. Further Proposals for Completing the Liquidation

The Liquidators propose to take the following further actions:

- liaise with Niche and contract principals to finalise remaining invoicing matters;
- review potential voidable/insolvent transactions;
- continue a review the actions of management, directors, officers and advisers of the Company and any potential claim against them;
- liaise with the Australian liquidator regarding prospects of the distribution to AdBuild in relation to related-party debts;
- distribute available funds (if any) to preferential and unsecured creditors;
- assessing other areas of potential recovery; and
- complying with our statutory obligations.

The Liquidators will consider further actions subsequent to additional information regarding the Company's affairs that comes to the Liquidators' attention. Further actions will be subject to the availability of funding and an assessment of the benefits of pursuing recoveries.

7. Estimated Date of Completion

It is not practical to estimate the date of the completion of the liquidation at this stage. Our subsequent reports to creditors will, when appropriate, advise of an estimated completion date.

8. Contact Information

If you require any further information, please direct enquiries to:

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Dated this 16th day of August 2022



JESSICA KELLOW
Liquidator

Appendices

- Appendix 1 - Statement of Receipts and Payments
- Appendix 2 - Remuneration Schedule
- Appendix 3 - Statement of Affairs
- Appendix 4 - Interests Statement

APPENDICES

Appendix 1 - Receipts and Payments

Advanced Building & Construction Limited (In Liquidation)			
Summary of Receipts & Payments	Appointment Date to 16 February 2022	17 February 2022 to 16 August 2022	Liquidation Total
	\$	\$	\$
RECEIPTS			
Opening Balance		1,114,802	
Balance of Funds from Administration	745,904	-	745,904
Building Consent Refunds	2,017	3,000	5,017
Contract Receivables - Progress Payments	4,207,751	709,013	4,916,764
Inland Revenue - GST Refunds	270,624	1,752	272,376
Interest	282	2,401	2,683
Sale of Assets - Scrap Metal	2,218	-	2,218
Sale of Business - Balance of Purchase Price	5,040,000	-	5,040,000
Utilities Refund	94	2,605	2,699
Total Receipts	10,268,890	1,833,572	10,987,660
PAYMENTS			
Accident Compensation Corporation Levies	-	131	131
Advertising	650	4,820	5,470
Balance of Administrators' Costs & Disbursements	36,490	-	36,490
Bank Fees	304	131	435
Building Consents	543	-	543
Cleaning and Utilities	27,631	443	28,074
Computer and Software Expenses	15,697	24,728	40,425
Equipment Lease Payments	13,326	-	13,326
External Accountancy	1,518	-	1,518
Freight	3,042	-	3,042
Inland Revenue - GST	71,470	29,529	100,999
Inland Revenue - PAYE	67,613	-	67,613
Insurance	38,057	-	38,057
Labour Hire	529,618	-	529,618
Legal Fees	78,153	96,007	174,160
Liquidators' Costs and Disbursements	484,287	194,321	678,608
Payroll Fees	332	-	332
Resident Withholding Tax	93	886	979
Secured Creditor Distributions	3,921,295	-	3,921,295
Staff - Contractors	110,705	-	110,705
Staff Expenses	16,071	-	16,071
Staff Wages and Holiday Pay	137,488	-	137,488
Sub-Contractor Payments / (Credits)	1,679,857	(16,202)	1,663,655
Supplier Payments / (Credits)	1,060,832	(59,331)	1,001,501
Unsecured Creditor Distributions	855,284	-	855,284
Vehicle Expenses	3,731	-	3,731
Total Payments	9,154,088	275,463	9,429,551
Cash on hand	1,114,802	1,558,109	1,558,109
Made up of:			
Funds Held Separately on Trust Pending Adjudication of Claims	309,600	310,027	310,027
Liquidators' Trust Account	805,202	1,248,082	1,248,082
Cash on hand	1,114,802	1,558,109	1,558,109

Note: figures are recorded on a GST-inclusive basis.



Appendix 2 - Remuneration Schedule

Advanced Building & Construction Limited (In Liquidation)

Remuneration Report - Period: 5 August 2021 - 16 August 2022

	Hourly Rate (\$)	Assets		Company Records		Creditors		Day One/Initial Tasks		Debtors		Employees		Financial	
		Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours		
Partners	395 - 495	20,932.60	44.50	5,785.00	13.00	41,839.66	89.40	-	-	3,488.75	7.25	111.25	0.25	18,919.40	39.45
Managers	195 - 345	9,683.75	29.75	61,436.25	187.25	48,818.75	147.75	81.25	0.25	10,753.33	32.13	3,747.50	11.50	60,361.50	183.00
Analysts	110 - 295	421.25	3.25	18,686.25	96.00	8,996.25	69.25	281.25	1.25	547.50	4.50	288.75	1.75	217.50	1.75
Finance / Administration	195	-	-	-	-	97.50	0.50	-	-	-	-	536.25	2.75	16,146.00	82.80
Support Staff	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		31,037.60	77.50	85,907.50	296.25	99,752.16	306.90	362.50	1.50	14,789.58	43.88	4,683.75	16.25	95,644.40	307.00

	Hourly Rate (\$)	Admin/General		Investigations		Litigation		On-Going Trading		Planning/Review		Secured Creditors		Reporting		Total	
		Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours		
Partners	395 - 495	30,866.25	64.25	495.00	1.00	78,833.50	164.13	13,448.08	29.88	5,825.00	12.50	445.00	1.00	1,632.50	3.50	222,621.99	470.12
Managers	195 - 345	9,901.25	30.25	14,092.50	41.50	21,471.25	64.25	36,987.50	113.50	9,166.25	27.25	1,472.50	4.50	7,026.25	21.25	294,999.83	894.13
Analysts	110 - 295	4,434.05	15.00	5,322.50	24.00	665.00	3.75	3,146.25	23.75	971.25	5.50	-	-	-	-	43,977.80	249.75
Finance / Administration	195	7,371.00	37.80	-	-	-	-	-	-	-	-	633.75	3.25	-	-	24,784.50	127.10
Support Staff	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		52,572.55	147.30	19,910.00	66.50	100,969.75	232.13	53,581.83	167.13	15,962.50	45.25	2,551.25	8.75	8,658.75	24.75	586,384.12	1,741.10

Disbursements	Costs
Advertising	2,022.20
Miscellaneous	2,439.24
Overheads	3,367.49
Travel Costs	910.48
Total	8,739.41

Note: The hours and costs shown in the table above are the actual WIP totals to date. All totals are exclusive of GST. Payment of \$590,094 (excl. GST) has been received on account for both fees and disbursements.

Appendix 3 - Statement of Affairs

Advanced Building & Construction Limited (In Liquidation)					
Statement of Affairs					
	Notes	Initial Report Book value*	Est. Recovery	As at Feb-22	As at Aug-22
Assets					
Cash on Hand				805,202	1,248,082
Funds Held on Trust Pending Adjudication of Claims	1			309,655	310,027
Balance of Funds from Administration	2		745,904	-	
Net Proceeds from Sale of Business	2		5,040,000	-	
Accounts Receivable	3		1,712,803	68,991	135,279
Accounts Receivable (yet to be invoiced)	3		3,011,158	1,016,993	410,359
Unapproved Variations	3		to be confirmed	170,821	12,271
Inter-Company Loan Receivables	4	3,120,000	unknown	unknown	unknown
			10,509,865	unknown	unknown
Less Administration/Liquidation On-Going Trading Expenses					
Sub-Contractors and Suppliers	5		to be confirmed	to be confirmed	74,000
Inland Revenue	6		to be confirmed	-	-
Labour Hire and Other Expenses	6		to be confirmed	-	-
Less Secured Creditors					
Kiwibank Limited	6		(2,032,908)	-	-
GAMOS Services Limited	6		(1,091,957)	-	-
PMSI Creditors	6		(579,936)	-	-
Surplus/(shortfall)			to be confirmed	to be confirmed	unknown
Less Preferential Creditors:					
Employee Holiday Pay	6		(89,411)	-	-
Inland Revenue	7		(865,589)	(818,859)	(818,859)
Surplus/(shortfall)			to be confirmed	to be confirmed	to be confirmed
Less Unsecured creditors:					
Trade Creditors	8		(4,085,298)	(3,405,080)	(3,405,080)
Employee Unsecured Claims	8		(29,726)	(23,781)	(23,781)
IRD unsecured claim	7		(85,000)	(62,798)	(62,798)
Related Party Advances			(1,074,000)	-	-
Contingent Creditor	9			(1,548,000)	(1,548,000)
			(5,274,024)	(5,039,659)	(5,039,659)
Overall surplus/(shortfall) for Creditors prior to costs of liq.			to be confirmed	to be confirmed	to be confirmed

The above amounts are subject to the costs of liquidation and are recorded on a GST-inclusive basis.

Notes to Statement of Affairs

- The Liquidators are liaising with certain creditors regarding claims filed in the liquidation.
- These funds have since been received in full.
- The balance of the contract receivables that the Liquidators anticipate receiving.
- As indicated in our reports, we are uncertain as to the recoverability of these loans at this time.
- Estimated remaining direct costs in order to collect / invoice accounts receivable (above at point 3).
- These claims and expenses have been paid in full during the course of the liquidation.
- Inland Revenue's claim was filed subsequent to the interim distribution paid to unsecured creditors in October 2021.
- The February and August 2022 balances are net of the 20 cents in the dollar interim distribution paid in October 2021.
- As indicated in our reports, these are claims that we have either rejected or have been unable to adjudicate and includes what was previously classified as a related-party advance.

Appendix 4 - Interests Statement

(Pursuant to section 255A of the Companies Act 1993)

This Interests Statement is to be read in conjunction with the Liquidators' previous Interests Statement in our previous reports.

We, Iain Bruce Shephard and Jessica Jane Kellow, Licensed Insolvency Practitioners of BDO Wellington, (Registration Numbers: IP71 and IP75 respectively), declare that:

- We have made the appropriate inquiries that are required for ensuring that this Interests Statement is complete; and
- Since the date of our previous Interests Statement, we confirm that we have not become aware of any additional circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest in relation to the independence of our role as Liquidators.

DATED this 16th day of August 2022



IAIN BRUCE SHEPHARD
Liquidator
Licensed Insolvency Practitioner
Registration Number: IP71



JESSICA JANE KELLOW
Liquidator
Licensed Insolvency Practitioner
Registration Number: IP75