



11 November 2011

Mr Tim Hughes
The Principal Research Officer
Economics and Industry Standing Committee
Level 1
11 Harvest Tce
WEST PERTH WA 6005

Dear Mr Hughes,

Inquiry into Ironbridge Holdings Pty Ltd (Ironbridge) and Other Matters Regarding Residential Land and Property Development – Supplementary Submission of Mr Ian Wallace (Director – Ironbridge)

Further to my appearance before the Economics & Industry Standing Committee (**the Committee**) regarding the Inquiry into Ironbridge Holdings Pty Ltd and Other Matters Regarding Residential Land and Property Developments (**the Inquiry**) on 26 October 2011, I have elected to make a supplementary submission to the evidence I gave at that appearance.

QUESTIONS ON NOTICE

Firstly, I would like to respond to the 4 questions on notice that were proposed by the Committee during my appearance:

- (1) You advised that 249 Lots have been sold. For Clarification, how many of these 249 lots sold are without titles?**

To date, Ironbridge has created titles to 253 residential lots at The Tuarts estate, ALL of which have been sold and settled.

Ironbridge is currently pre-selling lots in the 3rd and 4th development stages “off-the-plan” – meaning titles to these lots do not currently exist, but under the terms of contract, Ironbridge is required to create titles within a certain time frame, or else the contract is unenforceable.

There will be 32 lots in Stage 3, of which 17 are under conditional contract and 20 Lots in Stage 4, 1 of which is under conditional contract. Therefore the precise answer to your question is that Ironbridge currently has 18 conditional contracts for lots that are without title. None of these contracts are included in the 253 that we have sold and settled to date.

- (2) Could you provide exact numbers of lots sold that have had houses built on them?**

According to our most recent records, 217 of the 253 lots created have been built on. Of these 217, there are 13 lots that have had duplexes constructed on them, meaning that there are a total of 230 residences.

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- (3) On page 9 of the transcript you advised that you have 11 court orders listed against you, with which you have not complied. Can you provide copies of the judgments and the bailiff notes in relation to each of these orders?**

I have attached the list of Judgment Creditors that have engaged the Bailiff's office to manage enforcement of the judgment debt they are owed. There are 11 judgments listed with the Bailiff's office, and it was these 11 that I was referring to at the hearing on 26/10/2011.

I have also attached copies of all the official documentation relating to these 11 judgments that I have on file (Notices of Claim, Notices of Judgment & Property Seizure Notices etc).

I have subsequently looked at our records and note that there were a further two judgments that have been entered against Ironbridge, that have NOT been handed to the Bailiff's office for enforcement. I have listed these and also attached copies of the Claim notices for these two matters. I do not have copies of Judgment Notices for these two matters, but have been informed by the Magistrate's Court that judgments were in fact handed down for both matters, against Ironbridge for the sums claimed.

As I have explained later in my supplementary submission, I have also discovered 2 other Court proceedings which have not been resolved and no judgment has been made.

I have attached a list of these two matters. along with copies of the notice of claim for each. Please refer to my later response for an explanation of why these two were not disclosed at the hearing on 26 October 2011.

- (4) Could you provide copies of your original advertising materials for The Tuarts estate?**

I have attached the following:

- (i) Copies of 3 x advertisements that were produced in the period between November 2006 & March 2007. Each advertisement has the date of creation (which is not necessarily the date of publication) listed below it.
- (ii) A copy of a typical price list & lot plan that would be provided to interested purchasers.
This particular list was produced around 18 October 2008.
- (iii) Ironbridge has a specific website for the Tuarts estate – <http://www.thetuarts.com.au/>. This website has obviously undergone a number of changes, but its current format is typical of the form of website that has been used.
- (iv) Ironbridge also has information about the Tuarts on its company website - <http://www.ironbridgeproperty.com.au/Projects/TheTuarts.aspx>. I have attached a screenshot taken from that website on 08 November 2011.
It is not possible to show the exact website profile that would have appeared around the time each lot was sold, but suffice to say that this screenshot is typical of the site throughout its lifetime.
- (v) In October 2010, Ironbridge also uploaded a video advertisement for the Tuarts on to YouTube.com. The video can be viewed at:
<http://www.youtube.com/watch?v=ITJH1lePtrY>

ISSUES IN/RESPONSES TO THE TRANSCRIPT OF EVIDENCE

I have read over the uncorrected transcript of evidence from my appearance before the Committee on 26 October 2011. I do not have any grammatical corrections to make to the transcript, however, there are several matters that arose at the hearing which I can provide further information on, or that I specifically wish to clarify/respond to.

In each case, I have recited the specific parts of the transcript in italics, and then provided my further submissions beneath each quote.

PAGE 2:

The CHAIRMAN: Can you list the court proceedings that your company is currently subject to?

Mr Ian Wallace: The only one that we are subject to is one with the ATO—the Deputy Commissioner of Taxation. The most recent hearing on that was on 18 October and it was adjourned until 8 November. We expect by that time the action to be dismissed, because the debt has been reduced to almost nil at the moment.

The CHAIRMAN: Just to follow on, when you meet on 8 November, you are confident that you will get an adjournment and operate Ironbridge Holdings into the future?

Mr Ian Wallace: Yes absolutely.

I can confirm that in accordance with my statements above, the action brought by the Deputy Commissioner of Taxation to wind up Ironbridge was formally dismissed on 08 November 2011. I have attached a copy of the sealed orders of the Federal Court, confirming as such.

Later, on Page 9, Mr Johnston scrutinised my answer to the Chairman's question:

PAGE 9:

Mr W.J. JOHNSTON: And when you talked about court cases that you have got outstanding, the only court case you mentioned was the proceedings of the Australian Tax Office. You did not include the bailiff's actions.

Mr Ian Wallace: I think the question —

Mr W.J. JOHNSTON: The question was, "Can you list the court proceedings that your company is currently subject to?"

Mr Ian Wallace: No, I took the —

Mr W.J. JOHNSTON: So the court proceedings—the bailiffs—that you failed to pay a judgement debt is not one of those?

Mr Ian Wallace: I took that to mean court hearings within —

Mr W.J. JOHNSTON: So uncompleted court matters?

Mr Ian Wallace: Yes.

Mr W.J. JOHNSTON: So this is an uncompleted court matter; there is an outstanding court order against you and you have not complied with it, and you did not think that was worthwhile mentioning. How many uncomplished-with court orders are there? How many other court judgements have you failed to comply with?

I would reiterate that my answer was specifically addressing the question posed by the Chairman — that is outlining the "CURRENT" actions that the company was subject to. I see a clear difference between a 'current court proceeding' and a 'court judgment'. A proceeding is a matter that is ongoing, or one which has not reached a conclusion. A court action that has resulted in a judgment being delivered by that court is in my opinion, concluded, and no longer 'proceeding'. Regardless of this distinction, I have never tried to hide the court judgments made against Ironbridge, nor the fact that these judgments are overdue for payment. I have provided copies of those judgments in response to Question on Notice # 3, above.

As I mentioned in my response to Question on Notice # 3, subsequent to my appearance before the Committee on 26 October 2011, a further 2 unresolved court proceedings have been brought to my

attention. Both are filed on behalf of residents in the Tuarts Estate and relate to fencing and landscaping packages.

I have listed these two matters and attached copies of the notice of claim for each.

Please note that:

- (a) The claim by Cunningham & Cunningham was only lodged on 21 October 2011 and was not served on Ironbridge until after my appearance before the Committee; and
 - (b) The claim by Lilly was lodged in November 2010 and was not discovered before my appearance, because it was in a separate file to the other court claims/judgments (It was lodged over a year ago and therefore was stored separately to the more recent claims). I have contacted the Magistrate's Court who confirmed that no judgment has yet been handed down, and that the matter is due for a further hearing on 30 November 2011.
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PAGES 2-3:

The CHAIRMAN: Of the lots you sold, how many have received their fencing and landscaping packages in full from your company?

Mr Ian Wallace: We have created some 249 lots, of which 190-odd, give or take one of two, have been installed. The rest are still vacant blocks. All but two have received their fencing package.

The CHAIRMAN: Let us go through that again. You sold about 190 blocks?

Mr Ian Wallace: No; 249.

The CHAIRMAN: You have sold 249?

Mr Ian Wallace: Yes.

The CHAIRMAN: 190-odd?

Mr Ian Wallace: I will just get that exact figure for you. Very close to somewhere between 190 and 200 have been installed.

<002> Q/I 10:22:30 AM

The CHAIRMAN: How many blocks have had houses built on them, of the 240?

Mr Ian Wallace: Roughly between 190 and 200.

The CHAIRMAN: So what you are saying is that of those sold and meet the criteria of having a house, all of them now have fencing on them?

Mr Ian Wallace: All of them bar two and there are 11 cottage lots that still have not had their front fencing done. They have had their side fencing done, but we have not done their front fencing.

The CHAIRMAN: Has the fencing completed included painting?

Mr Ian Wallace: No. Can I just go back a little bit on this? When things changed financially, we elected to say to ourselves, "Let's get the fencing finished first. Then let's do the landscaping. Then let's do the painting as the final thing." So, no painting has been done. We think there are roughly about 140 that still need to be painted.

The CHAIRMAN: What type of material is the fencing? Is it that super 8 stuff—corrugated?

Mr Ian Wallace: Yes, it is corrugated. They do not call it —

Mr Nicholas Wallace: Super 6 fibro cement.

The CHAIRMAN: I thought you painted that before you put it on?

Mr Ian Wallace: No. You used to be able to, but it all comes out of Queensland.

The CHAIRMAN: Okay. That is beside the point. How many customers have had the work done independently or were fully reimbursed by your company?

Mr Ian Wallace: We think it is pretty close to 20-odd. It could be 20 to 25. There are still 11 left to be reimbursed.

As promised, I can now clarify the figures discussed at the hearing, above.

Of the 253 lots created to date at the Tuarts, 207 have applied and qualified for fencing and landscaping packages from Ironbridge.

FENCING

Fencing packages vary according to 2 categories of lots that were sold:

(a) Traditional Lots

A Traditional lot is entitled to boundary fencing, with a maximum of 3 sections of fence along the rear and/or side boundaries of the lot. 196 of the 207 eligible lots are "Traditional" lots.

Of the 196 Traditional lots, 194 have their complete boundary fence installed. 2 Traditional lots are yet to receive their complete boundary fence, though both are partially installed:

- The first lot has half of its rear fence and one side fence, but is missing the other half of its rear fence and 1 side fence; and
- The second lot is only missing 1 side fence.

Of the 194 fences installed, Ironbridge has been installed 172. The remaining 22 fences were installed by individual residents themselves, and these residents are therefore entitled to reimbursement from Ironbridge.

Of the 22 lots that were entitled to reimbursement from Ironbridge, 12 have been paid, with 10 still awaiting reimbursement.

(b) Cottage Lots

A Cottage Lot is entitled to the same boundary fencing as a Traditional lot, but is further entitled to a front fence as well. Front fences consist of a limestone wall base, with metal "pool fencing" being installed on top of the limestone base.

11 of the 207 eligible lots are Cottage lots.

(i) Boundary Fencing

Of the 11 Cottage lots, ALL 11 have their complete boundary fences installed.

Ironbridge installed 8 of these boundary fences, with 3 residents installing their own boundary fences (or part thereof) entitling them to reimbursement from Ironbridge. Of the 3 self-installed boundary fences, 2 have been reimbursed by Ironbridge, with 1 still awaiting reimbursement.

(ii) Front Fencing

All 11 of the Cottage lots have the limestone base of their front fences installed. These bases were constructed as a part of the development works of the actual lot.

2 of the 11 Cottage lots have their pool fencing installed, and BOTH of these residents have installed this pool fencing themselves. Ironbridge is still to install Pool fencing on the remaining 9 lots.

PAGE 3:

The CHAIRMAN: What about landscaping?

Mr Ian Wallace: We have 90 landscaping packages still to do.

The CHAIRMAN: Let us go back. So there are about 100 finished?

Mr Ian Wallace: Yes.

The CHAIRMAN: Could you provide the specific numbers as of some closing date that you specify as to—you know, you said about 190-odd to 200 —

Mr Ian Wallace: I have them here. I will just go back to the office and send them in.

The CHAIRMAN: Okay. That is good. So the landscaping—about 90 have been finished and 100-odd to go?

Mr Ian Wallace: No, the other way around—100 finished, 90-odd to go.

As mentioned already, of the 253 lots created to date at the Tuarts, 207 have applied and qualified for fencing and landscaping packages from Ironbridge.

LANDSCAPING

Depending on the specific contract of sale, the landscaping packages on offer are either \$3,000 (inc GST) or \$3,150 (inc GST) in value. The higher amount is generally offered to corner lots, which have a larger front area, and therefore require some additional materials.

The content of the packages are the same, and include:

- A section of lawn;
- Mulched garden beds, containing a specific set of plants (residents are given a number of 'plant themes' from which they choose one);
- A water-wise irrigation system to service the lawn and garden beds; and
- 1 x Feature "Peppermint" Tree (*Agonis flexuosa*).

Of the 207 eligible lots, 117 lots currently have a front landscaping package installed. Ironbridge has installed 81 of these 117 packages. The residents of the remaining 36 lots have installed their own landscaping package and are entitled to reimbursement from Ironbridge. Of the 36 lots entitled to reimbursements for self-installed landscaping packages, Ironbridge has reimbursed 20 lots to date, with 16 remaining to be reimbursed.

There are 90 remaining lots which do not have a front landscaping package yet.

PAGE 8:

Mr W.J. JOHNSTON: *They are joint venture partners. This is irrelevant! Let us get back to the thing: why did you not pay your bills on time? That is a good question. Can you answer it?*

Mr Ian Wallace: *Well, a lack of cash flow.*

Mr W.J. JOHNSTON: *Yes, so what! You paid all these other bills. Did you draw directors' fees —*

Mr Ian Wallace: *No.*

Mr W.J. JOHNSTON: *— pay your sales staff in wages?*

Mr Ian Wallace: *No.*

Mr W.J. JOHNSTON: *Why is it that you were not able to pay some bills? What is it that says that you have got operations in other states, which apparently do not have the same problems, but you are not able to pay the bills, on your account, for 118 home buyers?*

Mr Ian Wallace: *Because of the financiers, and the lack of funds coming through. In the other states you do not provide landscaping and fences.*

Mr W.J. JOHNSTON: *You contracted to do this—nobody made you do it! These were decisions that you and your alone made.*

Mr Ian Wallace: *Of course, and the terms of financing have changed.*

I wish to give a clearer description of the issues that have led to Ironbridge not having the up-front funds for all fencing and landscaping packages to be installed in a timely manner.

The first point to note in relation to payments of the general expenses/bills of the company is that when Ironbridge obtains finance from a commercial lender, it is lent to Ironbridge according to very specific conditions. The release of these funds in accordance with these conditions, is overseen by the lender. It is not as if Ironbridge gets a loan for \$2m from the bank and this is paid to Ironbridge in a lump sum to do with as it pleases.

For example, if a bank were to lend money to Ironbridge for the development of Stage 4 at our Torquay subdivision, those funds are specifically allocated for the costs of developing that particular stage. The bank will only release funds when presented with invoices for the costs of developing stage 4. This is rigidly enforced – to the point where, even if we had an invoice associated with a

different stage within the same subdivision, we would not be able to pay it from the stage 4 facility, regardless of the amount of funding left in that facility.

To put this in perspective: while the residents at Dalyellup may have seen Ironbridge spending money developing further stages within the Tuarts subdivision, or spending money on other developments, Ironbridge would not be permitted to spend this money anywhere else, for example, on outstanding fencing or landscaping packages.

Ironbridge constantly applied to its financiers for funding to pay for outstanding fencing and landscaping packages in previous stages, and was consistently refused, with the response being: Ironbridge is expected to fund these outstanding packages from its own cash-flow.

It is then necessary to look at where Ironbridge's own cash-flow comes from. Our income is obviously generated by developing, selling and settling on residential lots. Once the lots are constructed and titles for those lots are created, they are encumbered by a mortgage to the financier who lent the money for their development. In order to settle these lots, we require the financier to provide a discharge of that mortgage. The financier will only provide such a discharge, once it is agreed as to how the settlement proceeds from each lot will be distributed.

In healthy economic conditions, the financier would normally retain the majority of settlement proceeds and use these to repay the loan made to Ironbridge. The balance of settlement proceeds would be distributed as follows:

- Costs of arranging and attending settlement of the lot would be paid to the various parties involved (settlement agents/solicitors etc);
- The sales agent's commission would be paid to the real estate agent;
- The amount of taxes on the sale (GST etc) are given to Ironbridge, who is then required to pay these to the ATO as a part of our monthly BAS submissions.
- Ironbridge would also be paid a variable amount of money, to fund its ongoing business.

When economic conditions tighten up, the banks hold on to as much of settlement proceeds as they can, in order to reduce the amount of the loan made to Ironbridge. Essentially this means that the variable amount that would normally be paid to Ironbridge to fund its ongoing business, is greatly reduced, or even eliminated altogether. This means that although settlements of properties are occurring, Ironbridge generates NO capital from these settlements; hence it has little/no cash flow. Ironbridge is not in a position to argue with the financier, because without the discharge of mortgage, settlements cannot occur. In the meantime, the loan itself is accruing interest, and without the funds from the settlement, the loan cannot be reduced, nor the interest paid. We are therefore at the mercy of the banks, who determine how funds will be distributed.

This is precisely what happened to Ironbridge across all our developments. We have multiple developments funded with the one financier, who tightened all their funding arrangements, effectively choking our cash flow, despite the fact that lots continued to settle.

The only funds that Ironbridge received were essentially for payment of tax, which we still struggled to cover, and hence the recent action by the ATO to have Ironbridge wound up.

The other major consideration for Ironbridge was that all the residents who are eligible for these fencing and landscaping packages are effectively unsecured creditors to the company. In these circumstances, the worst thing that could happen to the residents would be for the company to be wound up, put into administration or liquidated. If this occurred, the Dalyellup residents would rank behind all our secured creditors (banks/lenders etc), and alongside all other unsecured creditors to try and claim the amount of the packages owed to them.

In the event of liquidation and a fire sale of all our developments, without Ironbridge having fully developed all our properties, only the secured creditors' debts would be covered. This would leave the Dalyellup residents with NO recourse to recover what is owed to them. In my opinion, this would

be the worst case scenario for the residents. The “best outcome” (although still far from desirable) would be for the company to stay afloat and further develop our existing properties, so that our secured debt could be reduced, which would free up more funds from later settlements, which could be used to pay for the outstanding fencing and landscaping. In order to keep the company afloat, any spare cash that we did manage to obtain was used to pay essential bills that were not covered by our existing funding. This was only done with the goal of keeping the company operating so as to preserve the best interests of the residents in the long haul.

PAGE 6:

Mr W.J. JOHNSTON: *I am sorry; I am not quite understanding, and I apologise for that, but how does 50 future lots have anything to do with the 90 landscaping packages, the 15 reimbursements, the two side fences and the 11 cottage lots?*

Mr Ian Wallace: *There is just a lot more capital tied up in production.*

The CHAIRMAN: *You are saying that you would have had more free cash flow if you had those 50 lots, which are held up because of the work for the Water Corp?*

Mr Ian Wallace: *That is right.*

Mr W.J. JOHNSTON: *You are saying that you do not have the cash available to you to do the works for the 90 people where you have not done the landscaping packages, the 15 people who have sought reimbursement, having done the work themselves, the two side fences packages and the 11 cottage lots?*

Mr Ian Wallace: *We will have, but what I am saying —*

Mr W.J. JOHNSTON: *They paid you for that, did they not, when they bought their blocks? That is, 118 people bought a block from you and paid you for the works that included the 118 things that we talked about?*

Mr Ian Wallace: *Yes, that is right.*

Mr W.J. JOHNSTON: *And they have not had that delivered because you do not have cash available, because you are waiting for 50 blocks to get title?*

Mr Ian Wallace: *Combined with the pump station, and combined with dealing with lenders who do not like dealing in regional areas.*

In the above exchange, as well as the discourse on Page 5 in relation to the “Sewer Pump Station” [or Waste Water Pump Station (**WWPS**)], I did not articulate the relevance of these issues as clearly as I would like to have.

I firstly refer you to the description of our position with our lenders and the cash flow we receive from settlements, as described in the item from Page 8 of the transcript, immediately above. In addition to the banks refusing to provide funding for landscaping and fencing packages and requiring Ironbridge to use its own cash, any unforeseen development expenditure is yet another drain on the limited cash-flow that Ironbridge has access to. The debacle with the WWPS at Dalyellup is a perfect example of how our own funds (not those provided by lenders) can be entirely consumed, based on the decisions and demands of development authorities, such as the Water Corporation in this case.

Ironbridge is given a subdivision approval to develop lots at Dalyellup, issued by the Western Australian Planning Commission (**WAPC**). That approval is made subject to Ironbridge satisfying a series of conditions, which require Ironbridge to complete all the relevant infrastructure for the development of a residential site (EG: constructing roads, installing water and sewerage facilities, providing public open space etc). Alongside each of these conditions, a clearing authority is listed, who must be satisfied that Ironbridge has sufficiently fulfilled the condition of subdivision, and then provide a clearance, which the WAPC relies on as proof that the condition is fulfilled. The WAPC will only provide final approval and allow separate land titles to issue, once all the conditions have been cleared by all the relevant clearing authorities.

The Water Corporation is one such clearing authority, responsible for clearing conditions that relate to the installation of water, drainage and sewerage infrastructure. One of the conditions for subdivision of the next two stages at Dalyellup is that Ironbridge either:

- (a) constructs; or
- (b) enters into arrangements suitable to the Water Corporation to secure the construction of; a WWPS with a capacity to service a specific number of residences within the suburb of Dalyellup.

The Water Corporation would normally be prepared to accept a bank-issued bond equal to the estimated value of construction plus a nominal loading amount, instead of requiring a developer to construct the entire WWPS up front, which would take quite a long time. The Water Corporation normally allows this, as it is widely understood that developers rely on provision of such bonds to get early clearances, sell the developed lots, and use this cash flow to fund the construction of such large pieces of infrastructure. The Water Corporation currently holds a bond that covers the entire estimated sum of construction of the Dalyellup WWPS, but determined that they will also require that Ironbridge construct the WWPS by a certain date, before it will issue clearance of the relevant condition of subdivision. This in and of itself has consumed much of Ironbridge's cash flow, because the financier had originally only provided funding to cover the bond amount, not construction of the WWPS as well. Ironbridge has had to enter into deferred payment terms with the civil contractor, in order to construct the WWPS. In addition to this, the estimated timeline and cost of constructing the WWPS has blown out, requiring further cash to be contributed by Ironbridge.

Not only do such unforeseen costs and delays consume existing cash, they delay our access to future capital, because we cannot get clearances, which means we don't get titles, which means we cannot effect settlements and thus do not generate vital income.

PAGES 11 & 12:

Mr W.J. JOHNSTON: *A solvent company means a company that is able to pay its debts as they fall due. Are you able to pay all your debts as they fall due?*

Mr Ian Wallace: *As far as we are concerned, we are solvent.*

Mr W.J. JOHNSTON: *No; that is not the question I asked. I asked: are you able to pay your debts as they fall due?*

Mr Ian Wallace: *In the order in which they are due, yes.*

Mr W.J. JOHNSTON: *I do not understand the qualification. It is a very simple question. I am sorry if you are not able to understand it.*

Mr Ian Wallace: *No. I pay those debts to the best of my ability, thank you.*

Mr W.J. JOHNSTON: *So why is it that there are 11 outstanding judgements? If you say that you are able to pay your debts when they fall due, how can there be any outstanding judgements?*

Mr Ian Wallace: *I will leave that up to you. I think I have answered it.*

Mr W.J. JOHNSTON: *Do you understand what a judgement is?*

Mr Ian Wallace: *Of course.*

Mr W.J. JOHNSTON: *So you understand that that is the court's decision saying that you owe a certain person —*

Mr Ian Wallace: *Yes, and I have never denied owing them the money.*

Mr W.J. JOHNSTON: *And you agree that those 11 judgements exist today?*

Mr Ian Wallace: *Or whatever number it is, yes.*

Mr W.J. JOHNSTON: *But you were the one who said 11; I did not say that.*

Mr Ian Wallace: *I said that is probably the worst-case scenario.*

Mr W.J. JOHNSTON: *I do not know whether it is a good case or a bad case; I am just trying to get it clear. There are 11 judgements that you say exist and none of them has been complied with.*

How can you then say you are paying your debts when they fall due? How do you say that? There are 11 outstanding debts—11 judgements by a court that today are unpaid. They are statements of the court that you owe the money. You have not paid the money. The debts are due. How can you say you are able to pay your debts when they fall due?

Mr Ian Wallace: *Sorry. We will be able to pay the debts. I did not say “when they are due”.*

Mr W.J. JOHNSTON: *No, but they are due. They are due today. The judgements have already been granted. They have been issued.*

Mr Ian Wallace: *I will just have to leave it at that.*

Mr W.J. JOHNSTON: *But that means if you are not paying those debts, you are not paying them when they are due.*

Mr Ian Wallace: *What is better—to keep the company running or to make it insolvent? What you are suggesting is that it would be better to do an insolvent and leave everybody as an unsecured creditor.*

Mr W.J. JOHNSTON: *What I am saying is you should not come to us and say that you are able to pay your debts when they fall due if you are not able to do that. You should just be truthful. That is all I am asking for.*

Mr Ian Wallace: *Everything is paid and everything has been kept up to date, other than those judgements that you are referring to.*

Regardless of Mr Johnston’s personal views on what accounts for a solvent company, Ironbridge is currently solvent and continues to trade solvently. It is no secret that the company has struggled to pay all its debts on time – one need only look at the cash-flow and finance problems I have outlined above, to see why we have had such difficulties.

Ironbridge has been the subject of 2 winding up actions over the past 2 years. The express purpose of a winding up action is to determine whether or not the company in question is solvent. If it is found to be insolvent, then the Court is free to make an order that the company be wound up. Neither of those two winding up actions has succeeded, both having been dismissed. Over the course of those court actions, sworn affidavits have been filed by our accountants that attest to the solvency of Ironbridge, and with all due respect to Mr Johnston, I feel these override any of his personal opinions or definitions of solvency.

In addition to these facts, it should be noted that a debt falling ‘due’ simply gives the creditor the right to enforce the debt – or in other words, take further action to ensure that an overdue debt gets paid. It is entirely within the creditors’ rights and powers to waive the debt, or enter into alternative arrangements for the payment of the debt, such as granting an extension to the due date. Ironbridge has continued to negotiate such payment extensions and alternative arrangements, including with the Bailiff’s office.

PAGES 12 & 13:

Mr M.P. MURRAY: *The communication issue, to me, is one of the bigger problems you have had. The nature in which you communicate has also been a major problem—false promises, threats of legal action against people who make some claims against you and those sorts of things. The issue that I see that you have failed badly on is that communication—saying that you were in trouble, please be patient and the whole lot. I have had people on my phone saying that they have been abused, threatened with legal action and those sorts of things. I think that is unbecoming of any company.*

Mr Ian Wallace: *First of all —*

Mr M.P. MURRAY: *And you have done it to me as well.*

Mr Ian Wallace: *I have never, ever, and I am sure my staff would never have, made a threat in relation to legal action. We have always acknowledged to every person we have a liability to that we have that liability, and we have been trying to deal with it.*

Mr M.P. MURRAY: *What about the statements in emails that “Your fence will be put up*

Monday”, “Your fence will be put up Tuesday”, “The fence has gone on holidays and will be back afterwards”, instead of saying, “Look; we are having a bit of a problem. The fencing contractor has not been paid and refuses to do any further work”? Those sorts of things are what cause a lot of mistrust and distrust in here. Certainly, you are not allaying that in here about where we go to in the future. As Mr Johnston has said, you are not being open and honest about something that we are trying to get to the bottom of so it does not happen to people like yourself and buyers into the future.

Firstly, I acknowledge the frustration that the residents of the Tuarts have expressed as a result of communication from Ironbridge. While we don't seek to dismiss these frustrations in any way, it is essential to have regard to the context in which we have been operating:

For the financial reasons given above, cash has been extremely hard to come by, and more importantly, it has been almost impossible to be certain about when cash was coming in. We were dealing with very (understandably) angry people, demanding certainty about when we would perform our outstanding obligations. Under that kind of pressure, we tried to give specific deadlines to put their minds at ease. I would repeat what I stated at the Committee hearing: Every time a date was quoted to a resident, it was honestly made in the belief it would be met, usually because Ironbridge was expecting income (EG: from a lot sale at another subdivision). Our failure to meet these deadlines was usually due to:

- Payment not coming through when expected;
- Lenders changing the amount they would allow Ironbridge to retain from a particular settlement; or
- Funds having to be diverted to pay an expense that was essential to keep the company afloat and developing.

I reiterate my evidence that neither I, nor any member of my staff has ever threatened any of the Tuarts residents with any form of legal action. On the contrary, I have consistently stated (both to my staff and to the Tuarts residents) that we acknowledge we owe the fencing and landscaping packages, and that we are not walking away from these obligations. In this context I find it hard to even comprehend what kind of legal action I would threaten them with?

PAGE 13:

Mr M.P. MURRAY: The first time I put a letter out, one of the first things you did was threaten me with legal action.

Mr Ian Wallace: I am not aware of that; I am sorry.

Mr M.P. MURRAY: Sounds like Carmen Lawrence.

I have sent a total of 4 letters to Mr Murray, each time responding to letters he sent to me. I have reviewed the four letters I sent, dated 01 Dec 2010, 24 Jan 2011, 31 Jan 2011 and 16 Mar 2011. NONE of these contains any threat of legal action, or indeed any reference to any kind of retributive action against any party, let alone Mr Murray.

Under the circumstances I believe it would be appropriate for Mr Murray to retract the statements quoted above.

PAGE 13:

The CHAIRMAN: Do you ring-fence your operations—that is, if you get in trouble with one delivering services for The Tuarts estate, for instance —

Mr Ian Wallace: No; I am not up to any of those sorts of tricks.

The only caveat I would put on this response is that, as explained above, the conditions of our development loans do make it impossible to use bank-provided funds to finance other projects. The banks restrict their lending facilities to be used for that development ONLY, and hence it is difficult to channel funds from one project to another. The only time this is possible is when the banks allow Ironbridge to retain a larger portion of settlement funds – which they have not been doing over the past few years since the GFC.

PAGES 16 & 17:

The CHAIRMAN: What are you going to do about it?

Mr Ian Wallace: We are creating the titles. The only clearance we have got left to get is from Water Corp.

Mr M.P. MURRAY: And what is the expected time frame?

Mr Ian Wallace: We are dealing with Water Corp! As I said, we have got practical completion. We have to get commissioning. Water Corp provides you with data after the event, which has meant the commissioning is delayed slightly. We hope that within the next two weeks it will be cleared up.

Mr M.P. MURRAY: It is a very important question because some of the questions I have had from my end of the stick are, “Do I walk away and forfeit my deposit?”

Mr Ian Wallace: Nobody would forfeit their deposit.

Mr M.P. MURRAY: But if they do not honour their contract to buy those untitled blocks—this is my understanding —

Mr Ian Wallace: We have to deliver the block. Nobody would forfeit their deposit. We have released half a dozen people from their contracts—people who are buying those blocks—if they have asked to. In fact, we did one this morning.

<007> C/G 11:09:22 AM

[11.10 am]

Mr Nicholas Wallace: We did two this morning.

Mr M.P. MURRAY: So, if someone wants to walk away from there, they can come and see you and you will deal them out.

Mr Ian Wallace: Yes.

Mr M.P. MURRAY: Is that what you are saying?

Mr Ian Wallace: Yes.

All contracts that we use to sell lots in WA are signed under the Joint Form of General Conditions for the Sale of Land (**the Joint Form**) – which is a set of pre-drafted conditions that apply to that sale contract. It is common practice for developers to sell under these pre-conditions, but also it is common for developers to expressly vary some of those conditions to accommodate various aspects of their development.

The Joint Form contains sections that set specific timelines that developers have to meet when they are selling land “off-the-plan” – or in other words, selling land before a title actually exists. It is incumbent on the developer to meet these milestones and ultimately to have the titles created within the time frames set by the Joint Form.

Our experience shows us that the milestone deadlines set by the Joint Form are quite restrictive and don't reflect the practical reality of developing land in WA. For this reason, we generally make express amendments to the Joint Form when we pre-sell land in WA. This is clearly pointed out in the contract which the purchaser signs.

If Ironbridge fails to meet these amended deadlines, the contract therefore becomes unenforceable due to breach of contractual conditions. In these circumstances, Ironbridge cannot keep the purchaser's deposit, and as stated above, we have no choice but to accept termination by the purchaser and refund their deposit.

PAGE 21:

Mr W.J. JOHNSTON: *The residents, when they gave evidence to the committee, talked extensively about this issue that the chairman has just raised, this question of the liveability of The Tuarts estate. Do you think there is any way of compensating people for the additional impact—not just the direct impact of “I don’t have a fence”, but, “I can’t let my kids play outside. I can’t own a dog. I have to clean my carpets on a regular basis”? Do you think there is any opportunity for compensation for these additional impacts of Ironbridge’s failure to provide contracted items?*

Mr Ian Wallace: *Certainly, we have been approached by a few people in relation to certain matters, and when we have looked into it, we have dealt with it, and we have compensated them.*

Mr W.J. JOHNSTON: *So you are happy for the committee to make that as a recommendation.*

Mr Ian Wallace: *As long as it is well and truly justified.*

Having had time to contemplate Mr Johnston's questions, I would change my response, in that I would not be happy if the Committee were to recommend that Ironbridge compensate all residents at the Tuarts for the type of impacts referred to. There are 2 primary reasons for this:

- (1) Without underestimating our responsibility for the delays, I believe that, Ironbridge is not solely responsible for these outcomes, when you have regard to the overall chain of causation. We never intended to cause these delays and as I have stated, they occurred for a variety of reasons, many of which were beyond Ironbridge's control; and
 - (2) The damage that Mr Johnston refers to would be extremely hard to quantify. It would be easy to claim a large amount of compensation for damage allegedly caused by Ironbridge's actions/inaction, without having consideration to the wider factors I have outlined. I would therefore not be 'happy' to expose the company to such indefinite liability.
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PAGE 22:

The CHAIRMAN: *This is a vacant lot now being used as a dump site.*

Mr Ian Wallace: *It is not vacant; it is part of the balance title. It is very hard to control what individual builders do in any balance area.*

Mr Nicholas Wallace: *Me just looking at that photo, someone has gone and dumped their own furniture and their disused items there, which happens a lot in subdivisions, especially when you do not have houses built.*

Mr M.P. MURRAY: *Yes, sure, and we understand that what has happened is that all sorts of rubbish has been dumped there, but the point the residents were saying is that that is why some of the devaluation is coming there, because you are not taking the time to take that little extra step to go out there. You could just about throw it on the back of a trailer personally and tidy it up with a shovel. It is depressing to those people who are living there.*

Mr Ian Wallace: *Firstly, that statement is not true and I would say that is probably every second or third month right throughout the last two years that we send a team of guys right through the whole subdivision picking up everything and getting it taken away. Tom has been in charge of doing that.*

The particular site in the photo in question is what we refer to as the 'balance title' – meaning the part of land that Ironbridge currently owns, which is to be further developed into more residential

land at some point in the future. Firstly, I would note that Ironbridge is responsible for making sure that this balance title is kept in good order, in accordance with any Shire of Capel guidelines, just the same as any ordinary land owner would be. Having said this, it is extremely difficult for Ironbridge to monitor the large amount of building activity that occurs on the newly created lots that adjoin the balance title. Rubbish and dumping on the balance title is a frequently occurring event and we do arrange for this debris to be collected and removed on a regular basis, but it is impossible for us to police the border at all times.

I would further note that if residents are unhappy with the dumping (just as Ironbridge is) they should report this to the Shire of Capel who can pursue those parties that dump illegally on Ironbridge-owned land. The residents have complained to Ironbridge about this rubbish, and we have always responded by arranging for clean-ups and will continue to do so.

PAGE 23:

Mr W.J. JOHNSTON: Do you think it is a professional approach for a developer to leave large mounds of mulch on the vacant land so close to the residents?

Mr Ian Wallace: Well, certainly we have noticed it done in other areas. I have not thought that it was offensive at all. In relation to the rubbish adjoining, it certainly is.

Mr Nicholas Wallace: Maybe I can make some statement regarding the mulch. We have used it in landscaping along the way. We have had people ask us whether they can fill their trailers up with mulch, which we have let them do. It is not right next door; my guess would be that it would be 200 metres-plus away. Certainly the rubbish that people have dumped near the mulch is an eyesore, but the mulch itself can still be used by people. To me, it seems silly to get rid of it, because you can use it as the project keeps on going.

Mr W.J. JOHNSTON: You would not think to dispose of it through any of the organisations that sell mulch—deal with mulch—across the state?

Mr Nicholas Wallace: Look, my memory is that quite a lot of it has been taken away. I think there was a group that shredded the trees and used a lot of mulch themselves, but it is just such a large amount of it. But it has been progressively used along the way.

Mr Ian Wallace: To answer your question, if somebody said to us that they felt it was offensive, then we would get it removed.

Mr W.J. JOHNSTON: So, you think it is an entirely professional approach to have those big piles of mulch sitting on the development?

Mr Ian Wallace: Well, it is not an unusual approach in any large subdivision, because it is re-used again.

On reflection I believe it is entirely professional and not inappropriate for Ironbridge to keep the material stockpiled on site. Ironbridge was required to clear some of the large trees on the existing property as a part of the development works. In the interest of cost-saving as well as recycling, we make use of the cleared trees by mulching them and using this mulch in our landscaping works. There is nothing offensive about the material being stockpiled where it is. I point out that the land it sits on is a *development site* – not a public garden. I acknowledge that this adjoins the existing part of the residential estate, but it is only there temporarily.

I further note that even if the mulch was removed temporarily and stored elsewhere (a costly and inefficient exercise), the site would still be prepped for development, meaning it would just be an open sand pit. I don't see this as any more or less desirable than having the mulch there.

PAGE 23:

The CHAIRMAN: Just a question: Are any undertakings you make today contingent upon the settlement of other lots on Ironbridge projects?

Mr Ian Wallace: No. They are contingent upon getting the commissioning of the pump station.

I'd like to clarify here that the undertaking to complete specific works within 6 months, is given on the assumption that Ironbridge is permitted by our financier to retain sufficient funds from the settlement of the next 2 x stages of the Tuarts to cover these costs. I am confident that given the significant progress that the company has made to resolve a variety of its financial difficulties that Ironbridge will be permitted to retain these funds. The 6 month undertaking is also contingent on getting the titles to the next two stages, which is contingent on the WWPS being commissioned by the Water Corporation and clearances being given.

PAGES 23 & 24:

The CHAIRMAN: Yes. Just for my own sake, how did Ironbridge and The Tuarts estate get in trouble with meeting their obligations on landscaping and fencing? Did you have trouble selling the lots? What was the major factor of you not being able to deliver the agreed services?

Mr Ian Wallace: Suncorp is not only the lender to this subdivision, it is the lender to a couple of others that we operate, and they just demanded more equity.

The CHAIRMAN: So, basically they removed a substantial access to finance.

Mr Ian Wallace: There was always an arrangement that part of the settlement proceeds would be fed back to us to cover these sorts of matters, and they changed the terms of that.

The CHAIRMAN: They did that in, what, 2008?

Mr Ian Wallace: Look, I cannot remember the exact date.

The CHAIRMAN: During the global financial crisis?

Mr Ian Wallace: Yes.

The CHAIRMAN: Have they changed now that times are better?

Mr Ian Wallace: They have certainly renewed all our financing for the next 12 months. Yes, they have; they have eased up, I think is probably a better way to put it.

The CHAIRMAN: Is that helping you now to meet these obligations?

Mr Ian Wallace: Together with other factors we have put in place.

While the position with Suncorp has substantially improved over the past few months, I would reiterate that our continued requests for funding to complete fencing and landscaping in previous stages at the Tuarts are still being refused by Suncorp. This can be seen as a clear indication that obtaining finance is still difficult.

As another example of just how restrictive the conditions of finance are, development loans are still being approved "EX GST" – meaning that the lender will give you the funds to pay for construction and other development works, but they will not give you funding to cover the GST on top of these works. This means that invoices are paid by the lender ex GST, and Ironbridge is expected to cover the GST from its diminished cash resources.

PAGE 24:

Mr W.J. JOHNSTON: *Can I just ask a question there? As you say, you are not the only person to tell us that financing is a lot harder now than it was before the GFC, but so far as our research shows, there are only two developers in Western Australia that have had problems meeting their obligations for their fencing and landscaping packages. Why do you think that of all the dozens and dozens of developers, there are only two that have had this trouble in meeting obligations?*

Mr Ian Wallace: *I would be surprised if there are only two.*

The CHAIRMAN: *I think what we have evidence of is that there are only two medium-sized developers or developers that have had this specific difficulty meeting this specific package and are still solvent. Do you know of any other ones that have gone under?*

Mr Ian Wallace: *There are certainly a lot of the smaller ones around, but I do not run a list of them.*

Representatives from the Department of Commerce gave evidence during their Committee hearing on 17 October 2011, that Ironbridge was one of 5 companies that had been the subject of complaints to the Department's Consumer Affairs division, relating to the non-delivery of post-settlement contractual obligations or 'incentive packages'. I note that in the transcript of that hearing and a supplementary submission made by the Department, they actually refer to 7 companies other than Ironbridge to have encountered similar issues, (though 2 were related to other entities on the list):

- Morgan Realty/The Fraser Family;
- HL Pty Ltd;
- Mammoth Nominees Pty Ltd (*same Director as HL Pty Ltd*);
- Recreation Drive;
- Altai Investments Pty Ltd (*same Director as Recreation Drive*);
- A & S Nominees Pty Ltd; and
- Olympic Holdings.

These are all obviously smaller development companies, and I would presume that they have run into similar difficulties in obtaining finance and being able to retain funds from settlements in the post-GFC environment.

I think this is a problem that would primarily be encountered by smaller firms, who are reliant on banks and mainstream lenders for their developments. This is to be contrasted with the larger, possibly publicly-listed companies, who have a number of sources from which they can obtain funds that are not specifically designated and can therefore be spent at the developer's discretion.

Aside from the notes above, I stand by the evidence I gave at the hearing as true and to the best of my knowledge. I thank the Committee for allowing me to make this supplementary submission.

Sincerely,



Ian Wallace
Director
Ironbridge Holdings Pty Ltd