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8 November 2024

## Circular to Creditors

Dear Sir/Madam

**Bibere Australian Beverages Pty Ltd trading as Fox Creek Wines (ACN 644 054 320)**  
**Crescere Australian Vineyards Pty Ltd (ACN 654 310 666)**  
**Opportuna Investments Pty Ltd (ACN 662 805 950)**  
**(All Administrators Appointed)**  
**(Collectively referred to as “the Companies”)**

As you are aware, David Kidman and I were appointed Joint and Several Administrators (**Administrators**) of the Companies on Friday, 18 October 2024 pursuant to section 436A of the *Corporations Act 2001* (Cth) (**the Act**).

I also refer to our first Circular to Creditors and Suppliers dated 18 October 2024 for creditors (**the First Circular to Creditors**).

### 1 Summary

The purpose of this letter is to advise that despite indicating at the first meeting of creditors an adjournment of the second meeting of creditors was being contemplated, the Administrators now consider it appropriate to make an application to extend the convening period(s) for the voluntary administrations of the Companies, and to provide notice the Administrators intend to make such an application shortly.

At this stage, the Administrators intend to file an urgent application with the Court as early as practicable in the week commencing 11 November 2024 but by no later than immediately prior to 15 November 2024 (being the day before the convening period expires) to extend the convening period(s) for the voluntary administrations for a period of up to 6 months. Once the application has been heard by the Court, creditors will be notified of the outcome in a separate communication.

### 2 Current expiry date of the Convening Periods

The voluntary administration regime (as set out in Part 5.3A of the Act) is designed to facilitate orderly and timely outcomes for creditors. Under section 439A of the Act, the Administrators must convene the second meeting of creditors within the “convening period”, generally being 20 – 25 business days after the voluntary administration begins.

The Court may extend this date should there be reasons that warrant an extension including that would enable a better outcome for the Companies’ creditors and stakeholders.

As detailed in our First Circular to Creditors for each of the Companies, in the event that the convening period(s) is not extended, a second meeting of creditors would be held for all of the Companies on or around 25 November 2024. At this meeting, the future of the Companies would be determined by creditors voting to: (a) accept a Deed of Company Arrangement (**DOCA**) proposal; or (b); return the company to the Directors’ control (which might only be relevant for Opportuna Investments Pty Ltd which now appears to hold no assets and have no liabilities); or otherwise (c) resolving to place the Companies into liquidation.

### 3 Reasons to extend the Convening Periods

As creditors are aware, shortly prior to our appointment as Administrators, a contract for the sale of certain vineyards was entered into (**Pre-appointment Contract**), which the Administrators are reviewing in the context of a broader restructuring plan developed by the Director of the Companies. As part of our role as Administrators of the Companies, it is intended that the business and certain assets of the Companies will be marketed in a sale process which is about to commence. This is coupled with a separate sale process for other Land and Property of the Companies including subject to the Pre-appointment Contract, as this will maximise the likely purchaser interest in the Companies and their business operations and also potentially the sale price obtained as a consequence of that process.

The wine industry, particularly in regions facing oversupply and depressed prices, requires a strategic approach to asset sales. Conducting separate sale processes allows for tailored strategies that can optimise the outcomes for each asset type. This approach can ensure that each asset is marketed to the most appropriate audience, potentially leading to better offers and terms.

We set out examples of reasons in support of the extension application, as follows:

- The Pre-appointment Contract outlines several prerequisites before settlement, including a land division application. Based on consultations with the town planner and land surveyor, the relevant application is scheduled to be lodged within the next two weeks. Once lodged, it is expected to take a number of months from the lodgement of the application for the Council and other regulatory bodies to review and approve, although we will be taking all necessary action to accelerate this.
- The sale process for the Companies' lifestyle land has begun, with expressions of interest closing on Friday, 22 November 2024. Additionally, the marketing campaign for the Fox Creek Wines business and applicable assets (which includes land on which the Cellar Door is located, but excluding the assets the subject of the Pre-appointment Contract) is set to commence in the week beginning 11 November 2024, with expressions of interest closing on 5 December 2024. Early sales advice indicates that completing the sale of the business or realising the assets through a DOCA-related transaction could take up to 3 months (with the land which is not the subject of the Pre-appointment Contract subject to the same subdivision as noted in the dot point above thereby potentially taking a number of months to settle).
- Different types of assets attract different types of buyers. By separating the sale processes, marketing efforts can be more targeted and effective. The business and assets may appeal to wine industry participants, while other land and property might attract real estate investors with different interests and requirements.
- The further time will, in all likelihood, increase the chances of the sale of the business as a going concern and/or a prospective purchaser putting forward a proposal to enter into a DOCA. Indeed, the sale campaign can be completed whilst the voluntary administration process continues. This will also enable the Director or other parties time and opportunity to formulate a DOCA proposal either as part of, or separate to, the sale campaign thereby enabling optionality for all stakeholders and creditors;
- However, and as mentioned at section 2 above, currently the Administrators are scheduled to hold their second creditors meeting for the Companies on or around 25 November 2024 which would be part-way through the sale process and around the time the land sub-division is lodged;
- It would be difficult for any creditor to reasonably assess any DOCA proposal that may be received by the end of the current convening period(s) in circumstances where the Administrators' sale campaign has not even reached the expressions of interest phase and the land sub-division has only just been lodged. Aligning the time period for the DOCA proposal via the voluntary administration process and the Administrators' sale campaign will provide greater optionality for the Companies' creditors and a better financial outcome for creditors based on initial advice from the valuer and selling agent we've engaged;

- By way of summary, keeping the trading entities out of liquidation is necessary to preserve the going concern value of the wine business and avoid crystallisation of employee redundancies and contingent liabilities on contracts, which is a possibility if the second creditor's meeting is convened as currently scheduled because there is not yet a DOCA proposal and, as indicated above, the sale campaign has not commenced and the land sub-division has not been lodged. It is critical to align the length of the convening period(s) with the trade-on period and conduct the ensuing marketing and sale campaign to preserve and possibly enhance value in the Companies' assets.

#### **4 Administrators' proposed extension recommendation**

Given the above, and with indicative support of two of the three secured creditors and two of the major unsecured creditors with whom we have spoken to today the Administrators will make an application for the extension of the convening periods by at least **6 months** to 18 May 2025.

We note that any creditors meeting can always be brought forward notwithstanding an extension may be sought to May 2025. By making an application for 6 months rather than a shorter period, such as 3 months, it will potentially avoid additional costs if the convening periods must be extended again.

#### **5 Request of creditors**

Should any creditor object to the extension of the convening period(s), you are requested to send in writing this objection setting out in detail reasons why to our office by no later than 10am ACDT on Tuesday, 12 November 2024 by email to [AU-FMFoxCreek@kpmg.com.au](mailto:AU-FMFoxCreek@kpmg.com.au).

The Administrators intend to file their urgent application shortly thereafter. Any objections will be considered as part of this application.

Creditors will be notified of the result of the above in a separate communication.

Should you have any other questions, please contact Antoni Trimboli ([AU-FMFoxCreek@kpmg.com.au](mailto:AU-FMFoxCreek@kpmg.com.au)) of this office.

Yours faithfully



**TD Mablesen**  
Joint and Several Voluntary Administrator