

Submission to Senate Inquiry

“Effects of the GFC on the Australian Banking Sector”

29 May 2012

Economics References Committee

P.O.Box 6100

Parliament House

Canberra, ACT, 2006

RE : WESTPAC LOAN TO BURANDA PROPERTIES PTY LTD

Dear Senators ,

Please find my submission as to how my business Buranda Properties along with my wife and myself were mistreated by Westpac Banking Corporation since mid 2009.

Background.

Buranda Properties and Paul and Tracey Cunningham owned a 25,000 square metre amalgamated property 2.5 kms from Brisbane CBD in the inner city suburb of Woolloongabba, this property had been rezoned from transport and light industry to high density mixed use development.

December 2007 Westpac banking Corporation advanced \$32.57mil against this property for a period of 18months based on a CBRE valuation of \$57 mil this facility was organised through Matthew Madsen a finance broker. It is important to note that at the time of this valuation no development approval had been granted to this site .

June 2009 Brisbane City Council granted development approval for 632 apartments, 7000 square metres of retail space, 14000 metres of commercial space and 24 town houses to be completed in six stages.

June 2009 CBRE revalued this property at \$30mil as a “whole site in one line” and \$40 mil as a “break up of the site ”, please note this valuation was prepared for Westpac Banking Corporation please refer the annexure 2

July 2009 my facility was transferred to Asset Management Brisbane headed by [redacted] along with assistants [redacted] and [redacted] and the bank had made it clear that they were not interested in refinancing the project and a timeframe was set for the breaking up and selling off of the property and repaying the Westpac debt.

July 2009 Matthew Madsen prepared and submitted various cash flows showing how the site would be broken up, sold off and the bank repaid .

1st September 2009 Buranda Properties, Paul and Tracey Cunningham entered into a “Business Finance Agreement-Details of Variation” with Westpac , Under this agreement Buranda Properties was to reduce their debt to \$29,836,500 by 15th Oct 2009, \$28,000,000 by 31st

December, \$21,550,000 by 31st March 2010, \$6,200,000 by 30 June 2010 and paid out in full by the 31 August 2010 refer annexure 3. This agreement basically stated that over a period of 12 months the site would be broken up sold down and bank would be repaid their debt. In the negotiations to achieve this outcome we offered to Westpac a further \$4.5 mil of unencumbered property as security, refer to _____ comments in **annexure 4 internal bank report dated 13 August page 3**. This report confirmed our proposal was based on a sell down of the properties individual allotments and that interest was capitalised within the facility, Page 5 of this report clearly states that unless the Variation Agreement was entered into the bank would not have access to these additional \$4.5mil properties, also Buranda Properties, Paul and Tracey Cunningham would be covering considerable costs, marketing and remediation of sites and by placing the company into receivership it would likely further diminish the value of the properties.

September 2009 an advertising campaign was conducted by Ray White Commercial. Poorer than expected results were achieved and _____ Head of Asset Managements insisted on meeting _____ Managing Director of Ray White Commercial without anybody from Buranda Properties being present, refer **Anexure 5**. We were very concerned that even though we were within the debt reduction limits set out in the Variation Agreement we strongly felt that _____ meeting with the agents without myself present would send the wrong message to Ray White Commercial. We were right. After this meeting the agents failed to complete reports on the campaign, _____ the principal of Ray White Commercial failed to attend meetings to present the progress of the sales campaign that they conducted on behalf of Buranda Properties.

31st December 2009 Buranda Properties met the target required and reduced its debt to \$28mil

January 2010, Mrs Cunningham who has a limited guarantee over areas of this site that are in the name of Paul and Tracey Cunningham made further offers to pay out smaller parcels of the site. This was rejected by Westpac. _____ demanded payment of interest even though this Variation Agreement was based on the break up and sell down of the property with the interest paid from the sell down of these properties.

27 January Matthew Madsen sent a letter requesting further allotments be released **annexure 5**

29 January 2010 In a conversation with my broker Matthew Madsen there was great concern that the bank was changing the agreement. A meeting with Westpac was set for 4 February 2010. It was requested by Westpac that I did not attend this meeting. A copy of a letter presented by Matthew Madsen at meeting, refer **annexure 6**,

9 February 2010 Matthew Madsen provided a report of the meeting **annexure 7**. This letter dated 9th February concerned me greatly as the bank was now clearly intending to change the arrangement particularly these comments:

“ _____ was concerned as to the impact on the value of the remaining land should individual lots be sold. This attitude concerns me significantly as the entire structure of your facility was based around a progressive sell down of the site which they now appear to be resisting or at least voicing their concern, particularly having regard for their current view as to the payment of interest.”

Given Westpac's intention to procure a new valuation I was very concerned as to how this would impact my obligations pursuant to the Variation Agreement. This concern was expressed in Madsens letter dated the 9 February 2010 **annexure 8** page 2 paragraph 3.

My concern was that we had to reduce our debt under Variation Agreement by \$6,450,000 to \$21,550,000 by the 31st March 2010, however now we were being told that we were not to sell any property unless at full valuation as set out in the CBRE Valuation report June 2009 as Westpac was now having the property revalued as a "Whole Site". This was not consistent with the Variation Agreement entered into on the 1st September 2009.

22nd February 2010, in order to fulfill obligations to Westpac and reduce my debt to \$21,550,000 by the 31st March 2010 and remain within the covenants set out in the Variation Agreement, Buranda Properties informed Westpac Bank that an offer from Mrs Cunningham to purchase and payout the following properties at the following prices.

(A) 170 Logan Rd for \$4,200,000 to be settled by the 29 March 2010 and

(B) 174 Logan rd for \$2,300,000 to be settled by the 29 March 2010.

Refer **annexure 9**

By accepting this offer Buranda Properties would have remained within their covenants and Westpac would have had its debt reduced to \$21,550,000. However the bank through its officers entered into a series of deceptive actions which deliberately set out to deceive Buranda Properties, Tracey and Paul Cunningham and even Westpac's own head office in Sydney and resultantly do financial harm to all parties.

Please refer to **Internal Bank report 16 February 2010 annexure 10** and refer to page 2 "the debtors strategy is now to sell the individual allotments to smaller /medium sized developers, this is consistent with the Variation Agreement entered into. However now on page 3 they refer to a mystery illness that will affect my ability to meet interest payments, I have lost little days due to illness over the last 40 years of working, I am interested to know what this debilitating illness is that they are referring to?

Interest was to be met by the sell down of properties that they are now rejecting!

In the last paragraph of page 3 they fail to mention that an offer of \$6,500,000 has been presented for 170 and 174 Logan Road that was initially presented at the 4 February meeting and confirmed again in Matthew Madsens letter of the 22nd February **annexure 9**

24 February 2010 sends an email to ,Head Valuer Jones Lang Lasalle to assess Paul Cunningham proposal to purchase 170 and 174 Logan Road before the 27 March 2010. In addition he asks "Our main concern is how the sale of these two lots will affect the value and marketability of the overall site and our resultant position" **annexure 13**, This is inconsistent with the Variation Agreement I entered into, my agreement was based upon a sell down of Individual properties that is why I offered an additional \$4.5mil in securities and offered to pay additional costs, marketing, remediation and other costs in selling the sites as per the Variation agreement entered into in 1st September 2009.

1st March 2010 writes to Matthew Madsen **annexure 17**

4th March 2010 Matthew Madsen Writes to _____, **annexure 15**, basically asking what is Client to do, market any areas of the site? You are rejecting offers yet expecting Buranda Properties and the Cunningham's to meet target reductions?

4th March 2010 _____ replies to Matthew Madsen's earlier email **annexure 16** In paragraph 2 made the following comment regarding Mrs Cunningham offer.

"In accordance with usual practise, the Bank before consenting to any sale must be satisfied that the purchase price is in accordance with the current market value of the property being sold. This is the reason the Bank has requested an updated valuation."

22 March 2010 _____ Manager of Valuations Jones Lang Lasalle, Queensland responds to _____, _____ and confirms that the \$6,500,000 offered by Mrs Cunningham for 170 Logan Rd and 174 Logan rd is fair and reasonable, refer **annexure 17**. By accepting this offer of \$6,500,000 this would have meant Buranda Properties met its 31st March 2010 debt reduction obligations, instead Westpac decided to withhold this information until forced to by the Federal Courts in October 2010. As Stated Before through the officers of Westpac Bank they went to considerable efforts to deceive and mislead the owners of Buranda Properties. Also by rejecting reasonable monies from Mrs Cunningham for these properties they denied her the right of discharging her obligations under her limited guarantees, why?

This issue has been put to all of the directors of the Westpac Bank in a letter dated the 18th November 2011, annexure 11 I was referred to a _____, Head of Asset Management Sydney who says the issue won't be debated!

29 March 2010 _____ is refusing to allow us access to information about the valuations that he ordered in February, he has refused to accept Mrs Cunningham's offer for \$6.5 mil for properties 170 and 174 Logan Road, even though he has been assured that the price is correct as set out in his letter 4th March annexure 15. _____, Valuer from Jones Lang Lassalle has confirmed so in his letter 22 March **annexure 17**

Due to this lack of response by Westpac Matthew Madsen sends a further letter to _____ on the **29 March 2010 annexure 18**, page 2 reconfirming Mrs Cunningham offer of \$6.5 mil, also suggesting that if the money offered so far, \$6.5 mil was not in line with the valuation then a further price could be considered and paid to the Bank within 30 days.

Additionally he updated Westpac on the contracts entered into with Queensland Government for 6 Maynard St and offering to put \$2mil on deposit to meet interest for the duration of the facility term.

1 April 2010 Valuation is received from _____ Manager for Queensland Valuations Jones Lang Lasalle, **annexure 20** page 12 the valuation for the "whole site" is \$19.5 mil, he also states;

"this valuation has been undertaken on the assumption the asset would be subject to a nine to twelve month selling period as consistent with current market conditions, and if marketing period was less than this, or sold under distress, then we consider the price achieved for the asset would be discounted significantly."

This Valuation confirmed that the sell down of the individual lots was going to achieve more, it further confirmed that if sold under distress it would lead to further loss of value.

Again I ask Westpac why did you put the company into receivership knowing that this will impact negatively on the value of the properties?

Why has Mrs Cunninghams offers of \$6.5 mil for 170 and 174 Logan Rd been rejected when again confirmed in this report page 13 that the balance of the land would not be impacted if these areas were sold.

1 April Internal Bank Report dated 1st April, annexure 21, states on page 1 that it has refused to sell Maynard St to a related party for \$1.75 mil, Page 2 Remarks Section states

“as Debtor has not come to us with an acceptable proposal or contracts of sale of any of the remaining lots, it is submitted that we issue demands on both the debtor and surety today. We will commence discussion with potential R&M/”

Again why is the Brisbane Asset Management deliberately misleading Westpac's Head office, why is there no reference in these internal reports to Mrs Cunninghams offer of the 22 February 2010 **annexure 9**, restated again in Matthew Madsens letters 29 March 2010 **annexure 18**, confirmed to be current market value by Westpac instructed valuer, from Jone Lang Lasalle as being fair and reasonable **annexure 17**

Nor is there any mention of any other offers to reduce the debt, why is there a consistent failure to mention these offers and a continued deception by and the Brisbane Asset Management team in presenting the internal reports to Westpacs Sydney head office?

7 April 2010 Letter of Demand is served upon Buranda Properties Pty Ltd **annexure 19**

14 April 2010, Further proposals made letter dated 29th March **annexure 22**

6 May 2010 Internal Bank report, annexure 23, page 2 Current Position states

“The debtor is reliant on asset sales to meet debt reduction requirements. Client is unable to meet scheduled debt reduction set for 31st March 2010 to \$21.6 mil (-\$6.5 mil)”

Again this is not correct. Why is Brisbane Asset Management making no reference to the Clients offers to purchase 170 and 174 Logan Rd for \$6.5 mil, in the meeting of the 4th February, confirmed in the letter of the 22nd February 2010 **annexure 9**, reconfirmed in the letter of 29 March 2010 **annexure 18**, confirmed to be a reasonable offer by Westpac appointed valuer on the 22 March 2010 **annexure 17**.

Why has Westpac refused to accept Mrs Cunninghams offer?

Nor does it mention any other offer made to reduce the debt, why is none of this mentioned in these internal reports from Brisbane Asset Management team to Westpacs head office?

Page 3 of 6 May Internal report the deception continues, section 2.1 paragraph 2.

“the inability of the client to settle lots and meet scheduled debt reduction,urgent action is now required to minimise loss.Client continues withhold information from the Bank regarding interested parties, namely Bunnings and we no longer have faith in the client.”

Page 3 Comments from Westpac Brisbane Asset Management team again fail to reveal to Westpac Sydney Head Office ,that the Client has a \$6,500,000 offer in writing presented to the bank on the 22February 2010 ,that has been confirmed as fair and reasonable by Westpac’s Valuer

from Jones Lang Lasalle on the 22March 2010.Again why has this not been revealed to Westpacs management team in Sydney?

Again the Westpac Asset Management team in Brisbane are again failing to reveal the reality,why?

I believe the reason was that head of Brisbane Asset Management wanted to sell all of the land directly to Bunnings and was prepared to put whatever misinformation forward to achieve this goal.

at this stage is new to Westpac,has recently been retrenched from Babcock and Brown and is out to impress his new employers with his ability to collect,ethically or unethically/

The Reality Regarding Bunnings

August or September 2009,I met in the offices of CBRE,Brisbane present were , Sales Consultants for CBRE, of Bunnings Property Acquisition, and Myself. presented me with a highly conditional offer from Bunnings for approximately \$17mil,conditions included,4 or 5 months due diligence,exclusive dealing period,little or no deposit.

October or November 2009 .I was in China and I received a call from ,he told me he had met from CBRE at Waterfront Place in Brisbane and he had received verbally the same highly conditional offer as before but the price had been increased to \$21 or \$22 mil for the complete site,it still included the 4 to 5 months due diligence,little to no deposit,exclusive dealing period,meaning no other offers could be considered while they were doing their due diligence.

As was no longer employed by Buranda Properties I asked him not to meet any agents without myself present as I wanted to be aware of all offers.

6 or 7 February I received a call form Matthew Madsen asking if I had an highly conditional offer from Bunnings ,I explained that I had had no personal contact since August or September of the year before, had a meeting in October with but had not heard anything since.

8 February, sent several emails enquiring about Bunnings to Matthew Madsen
Annexure 26A

23 February 2010 Mathew Madsen again replys to Kiburgs remarks about Bunnings **Annexure 26b**

27 April 2010 at 4.30 pmI had a meeting at my offices with from CBRE representing Bunnings, he presented me with a \$25,125,000 option agreement for 90 days ,with an exclusive dealing period with a \$20,000 option fee however this was not payable to the owner immediately
Annexure 26C

28 April 2010 I have a phone call with Matthew Madsen, I agree to meet with him on the basis I give him a copy of the Bunnings agreement received at 4.30pm the night before and review the offer I had received the night before, we then intended to meet with immediately after.

28 April 2010 I meet with Matthew Madsen at South Brisbane at 3pm with the intention of meeting with Kiburg at 4 pm in the city, am told by Matthew that does not want to meet with me as set out in emails attached **Annexure 26 D**

4 or 5 May 2010, I rang , Head of Property Acquisitions for Bunnings, I made an appointment for 2pm the 7 May to meet with Brett at his Brisbane offices at Mt Gravatt to discuss the Buranda Properties site. I advised my broker Matthew Madsen of this meeting, he advised .

6 May 2010 send email to Executive Director and Head of Asset Restructuring Sydney

“as discussed last night there is a meeting tomorrow between Bunnings and the borrower which shouldn’t happen” **Annexure 26 E**

7 May, I was contacted by Matthew Madsen that Buranda Properties had been placed into receivership that morning and the meeting with myself and from Bunnings was not to proceed **annexure 27**.

7 May 2010 receiver appointed on the basis I have defaulted under the terms of the security **annexure**.

August 2010, Caveats were placed on all secured properties and action is commenced in the Federal Court against Westpac for breach of contract and breaches of the Trade Practices Act.

September 2010 Westpac challenged the validity of the Caveats in the Supreme Court but was unsuccessful.

15 November 2010, Westpac, Buranda Properties, Korda Mentha, Paul and Tracey Cunningham proceeded to trial in the Federal Court which resulted in a settlement part way through the hearing. A critical aspect of the settlement was the purported “Sale” of the site for \$35 mil to what was represented as a “Substantial Entity” that had both the intention and capacity to complete a 35mil purchase.

This would have meant Westpac would have been cleared of approximately \$31 mil of debt, receivers retired and the balance of the proceeds along with 3 other properties, 1020 Stanley st East Brisbane, 3 allotments in word st Woolloongabba and 837 Stanley st Woolloongabba would be returned to Buranda Properties.

We consented to the settlement and cessation of the legal proceedings based upon representations made by the Banks lawyers, Mallesons, that the buyer was a credible party capable of making and

completing a \$35 mil purchase. In addition we relied on a "Duty of Care" being exercised by the Receiver Korda Mentha that they and Westpac were putting forward a credible "Substantial" buyer with the ability to settle a \$35 mil purchase.

Even though we asked several times the identity of the purchaser Mallesons refused to disclose the identity of the buyer.

January to August 2011, Despite the Bank, through Korda Mentha, the Receiver, consenting to numerous time extensions the buyer did not complete the sale. During four of the meetings that I attended with the Receiver over this period each time I was reassured that this purchaser was capable of completing the \$35 mil purchase and in fact on one occasion I was told this group had completed a purchase of large development site in another state for \$25 mil and was capable of completing this sale for \$35 mil.

Additionally in one of these meetings I questioned the Receiver, "was the purchaser making substantial contributions to cover these extensions?" I was assured by _____ of Korda Mentha that this was the case.

12 September 2011 we were advised by the Receiver that the properties were to be remarketed again as the purchaser had not completed

Mid September 2011 My solicitor Malcolm Wright conducted a search of ASIC lodgements forms, Presentation of accounts and statements for period 7 November 2010 to 6 May 2011 lodged by Korda Mentha. Under payments to we found random amounts of "Licencing Fees" paid by "Phoenix 8" totally \$10,000.01 plus \$1000.01 gst payments **annexure 24**

Malcolm Wright then conducted a search of companies under the name Pheonix8, to find a Perth registered company Phoenix 8 Asia Pacific Pty Ltd, incorporated in 17 June 2010, with a paid up capital of \$40,125, no other assets with a group of directors and shareholders that I knew were not capable of completing a \$35 mil development site sale. Far from being the "Substantial" company that had been represented by Westpacs lawyers, little monies paid in deposits and no 'Sale' agreement in place, a licence to resell the property at best!

I had personal dealing previously with four of the share holders and directors of this newly formed company Phoenix 8 Asia Pacific Pty Ltd in the capacity of real estate agents or finance brokers.

Now it had become evident that again Westpac through their Recievers Korda Mentha and Mallesons had deceived us into a settlement. Our investigations have lead us to confirm that the buyer did not pay a significant deposit or any other form of significant option fee and was never able to complete this purchase in its own right. It is our understanding that the buyer never intended to hold the property but could only hope to resell the property at best within the option period. If this situation had been explained to us at the time of the court action in November 2010 we would have never agreed to trading our legal rights for such a flimsy and dubious arrangement. It is now obvious that the Bank mislead us in order to circumvent the legal process that was only part way through. We had invested significant money and time resources in commencing the legal action and only consented to terminating it on the basis that the "Sale" was of high probability of returning the Banks monies and realising what we considered to a fairer value for the site.

16 September 2011 ,I sent a letter to Mr John Park and Mark Mentha the Receivers and Managers appointed to Buranda Properties **annexure 25**.

18 and 30 November 2011 Gail Kelly and all Westpac Directors were made aware of the actions of their staff and was asked to act in a reasonable manner to circumvent further legal action **Annexure 26**

December 2011 I again recommence legal action in the Federal Court against Westpac and Korda Mentha based on their misleading and deceptive behaviour.

My Complaints about Westpacs conduct of this lending agreement are summarised as follows:

***We entered into a Variation Agreement with the Bank that was intended to see the Bank repaid its funds on the basis it was a Breakup and sell down of the property.**

***We provided additional securities to Bank as part of the Variation agreement in order to improve Banks security position and to allow us an amount of time to sell down the property.**

***We were in a position to meet the 31st March 2010 reduction hurdle but this was rejected without reasonable grounds leading to Buranda Properties being placed into Receivership.**

***We claim that Westpacs Brisbane Asset Management team headed by through their internal reports deliberately withheld information from its Head office in Sydney regarding Mrs Cunninghams offer of \$6.5 mil for 174 and 170 Logan Rd Woolloongabba ,This amount had been confirmed by Westpacs appointed valuer as fair and reasonable and would not impact the values of surrounding properties.**

***Westpac was not entitled to reject offers that were confirmed as being fair and reasonable by their appointed valuers and then claim a breach under The Variation Agreement and appoint receivers.**

*** Westpac failed to allow the selldown of individual properties that the Variation Agreement entered into by Buranda Properties ,Paul and Tracey Cunningham was based upon.**

***Westpac demanded payment of interest on Capitalised Facility based on a sell down of properties outline in the Variation Agreement.**

***Westpac denied the sale of smaller allotments at reasonable prices.**

***Westpac breached the Variation Agreement by rejecting reasonable offers on properties by Mrs Cunningham.**

***Wespac breached the Variation agreement by rejecting Mrs Cunningham's offers on areas of the property that she had a limited Guarantee,namely 174 Logan Rd and 6 Maynard st.**

***Westpac Brisbane Asset Management team deliberately mislead Westpac head office through their internal reports about the state of health and the character of Mr Cunningham.**

***Westpac Brisbane Asset Management team conducted a series of meetings with CBRE agents with the intention of selling the Buranda Properties site to Bunnings ,to achieve this they acted in**

a highly deceptive and misleading manner towards Paul and Tracey Cunningham and their representatives Matthew Madsen. We believe the Mrs Cunninghams offers would have impacted the negotiations held between Westpacs Brisbane Asset Management team and Bunnings representatives and therefore these offers were not present in any internal reports.

***Westpac and its agents both Korda Mentha and Mallesons acted in a deceptive and misleading manner in representing the purported “Sale” to the Cunninghams and their lawyers before and during the proceedings in November 2010 .**

***Korda Mentha provided misleading and deceptive reports to ASIC in an attempt to hide the “Substantial” purchasers .**

***Westpac through its Receivers have failed to act with any duty of care when presenting Phoenix 8 Asia Pacific Pty Ltd as a credible party to purchase the property, they did this knowingly this group did not have the capability to complete a \$35 mil development site purchase.**

*** Westpac through its Receivers allowed a group to place a \$10,000 option fee on a \$35mil purchase knowing that this group would then “prostitute “ this property through out Asia without a comprehensive knowledge of the project or a sufficient funds being spent on advertising..**

***Westpac has acted highly irresponsibly to its shareholders by failing to accept Mrs Cunninghams offer of \$6.5mil which would have reduced its debt to \$21,550,000, instead it chose to put Buranda Properties into receivership and proceed on a “receiver forced sales basis “even though this was not recommended by _____ of JLL in his Valuation report in April 2010. By doing so Westpac diminished further the value of the property and increased the foreseeable loss Westpac will probably suffer in the near future, Westpac’s current outstanding loan on this property including receivers ,solicitors ,additional holding costs would be in the area of \$38 to \$39 mil .**

***Westpac by incorrectly placing Buranda Properties into receivership has caused Mr Cunningham and his family considerable financial loss, incurred large legal costs and placed enormous emotional burden upon his family.**

***Westpac by incorrectly placing Buranda Properties into receivership has affected Mr Cunninghams credibility and ability to raise funds from Australian Banks.**

Paul Cunningham

