

Submission to Senate Inquiry
"Effects of the GFC on the Australian Banking Sector"

31 May 2012

Economics References Committee
PO Box 6100
Parliament House
Canberra, ACT, 2600

Dear Senators,

Please find herein my submission that relates to how my business and I were treated by Bankwest after it was acquired by the Commonwealth Bank of Australia during the GFC in late 2008.

My company, _____, was placed into receivership by BankWest on March 2010 as a direct consequence of the unconscionable behaviour of the bank and its deliberate actions in orchestrating a series of events/situations that would cause _____ to commit a conditions precedent under the terms of it's loan contracts between the period of late 2009 to mid 2010.

_____ was a property development company founded in July 2001. The company was originally founded with the intention of specialising in the development of Independent Retirement Living for the over 55's. Our vision was to develop integrated retirement communities with non retirement residential sub-divisions. Including community facilities, retail, commercial, professional and hospitality elements into its developments. It was, and still is, our belief that urban integrated communities, such as the _____ vision, have the ability to provide sustainable services to both the retirement element and the broader community. This coupled with a hospitality element ensures that the

retirement community does not become an isolated stand alone community but rather a vibrant co-existing community with that of its intertwined non retirement neighbours. It also ensures that the necessary facilities, services and infrastructure required for the retirement community become commercially viable and sustainable.

To this end [redacted] had acquired 6 separate and adjoining parcels of land in the Port Macquarie Hastings region totally 450.59Ha, in the coastal location of Bonny Hills. We had worked extensively with local stakeholders and the Port Macquarie Hasting council, over many years Master Planning the development, gaining the first of our planned DA's (Development Approvals) for the construction of 102 ILU's (Independent Living Units) under the SEPP for Senior Living in NSW including 1000m² of Professional/Retail tenancies; 1000m² of Community and Retirement Community facilities; plus the infrastructure to role out the project (roads - public and private, water - mains and development requirements, mains sewage, grey water recycling, underground power etc - which included some of these assets being handed over to the local council as public assets).

Further development planned for the site included;

- 18 hole signature 'Jack Newton' Championship Golf Course and Country Club (DA approved, but deferred for future development)
- Rezoning of one parcel/title of land (Lot 101) as future residential under the signed off Mid North Coast Regional Strategy, known as Area 14 Master Plan.
- Eco tourism development - 30 stand alone chalets and associated facilities
- 160 room Hotel with convention and function facilities
- Setting aside of approx., 150 acres as environmentally protected reserves

Prior to embarking on this project [redacted] had successfully completed an exclusive residential land sub-division in Bonny Hills (known as [redacted]). Funded in its later stages by BankWest.

BankWest was introduced to our company in 2005, by our legal firm, as BankWest was actively seeking customers and developments particularly in the market segment of our development, [redacted].

Subsequently, BankWest provided us with a competitive alternative funding facility. So we entered into loan contracts with BankWest in 2006 which provided us funds for;

- Take-out of our existing funders (one of the top 4 Banks and a Private Superannuation Funder).

Our facilities were a rolling bill with capitalized interest which renewed each year on its anniversary including subsequent variations to the facility as additional funds where required. ie., as associated works (both soft and hard costs) progressed on the development, the facility levels were increased commensurate with the requirements.

The funds were secured by the asset, being the land holdings of [redacted] in line with assigned Valuations undertaken by a selected and approved Bank Panel Valuer.

All valuations during this period were undertaken in accordance with the terms and methodology as laid out by the bank in the loan contracts.

Critical Time Lines for Consideration:

- 1st valuation report undertaken by Jones Lang Lasalle, pre-DA approvals, 26 February 2006 on an 'as is' basis for \$11.0million
- 2nd valuation report undertaken by CB Richard Ellis (CBRE), pre-DA approvals, 14 February 2006 on an 'as is' basis for \$10.50million
- DA issued on Carnegie Cove (stage 1) 13 March 2006
- 3rd valuation report undertaken by CBRE, with DA approvals for funding purposes, 14 June 2006 on an 'as is' basis for \$39.90million. Gross realization on completion of stage 1 is \$74.62million (including residual land value)
- 4th valuation report undertaken by Land Mark White (LMW) with DA approvals for funding purposes, 29 August 2006 on an 'as is' basis for \$37.93million. Gross realization on completion of stage 1 is \$81.20million (including residual land value)
- Initial funding with BankWest commenced October 2006
- Finalization of development documentation (engineering, architecture, construction - soft costs) occurred between October 2006 and late 2008
- Between April 2006 and August 2008 [redacted] undertakes and completes DA approved site clearing, preliminary earthworks and civil works in preparation for commencement of construction of stage 1A
- Between August 2008 and December 2008 [redacted] is in discussions with BankWest regarding role over of existing facility and an increase to the facility for construction of stage 1A. BankWest protracted delays occur in this process and are a result of it's then parent HBOS not being able to extend whole sale funds to its subsidiary. BankWest Directors attend site with [redacted] and its legal team to discuss the future involvement of BankWest in the project as [redacted] funders. Subsequently, BankWest confirms its continuation and intention to fund the project (stage 1 - DA approved

development) to completion but requests modifications to the staging of the project, to which [redacted] complies.

- Pre-sales and marketing of stage 1 of the development occurred between October 2006 and December 2009 ('off the plan') Stage 1A pre-sold, plus 2 pre-sales (one each) for stages 1C & 1D. Deposits taken and held in lawyers Trust account by early 2008.
- Two Section 96's submitted and approved (amendments to the DA) between early 2008 and late 2008
- 5th valuation report undertaken by LMW, with DA approvals for funding purposes, 17 September 2008 on an 'as is' basis for \$25.09million. Gross realization on completion of stage 1 is \$74.92million (including residual land value). Devaluation of 'as is' value is a direct result of the GFC.
- Commonwealth Bank (CBA) purchase Bankwest December 2008
- LMW extend validity of their \$25.09million valuation, at banks request, so that funding can proceed, LMW letter dated 19 December 2008.
- April 2009 BankWest (under CBA ownership) approve the role over of existing facility and an increase in funding for construction. This action essentially commits BankWest to the completion of stage 1. Due to the re-staging model requested by BankWest, full loan repayment does not occur until stage 1D (circa year 4 or 5 of construction). In fact [redacted] debt levels increase throughout the staging as a consequence of the re-modeling request by BankWest.
- [redacted] contract Bendix Constructions in June 2009 to undertake the approved works for the project [redacted] under a Fixed Price Building Contract, approved by BankWest, and construction commences in the same month.
- BankWest, [redacted] and Bendix sign off on Tripartite Agreement as part of the loan conditions requested by BankWest in June 2009.
- 29 July 2009 BankWest approved Quantity Surveyor (QS) submits Initial Project Report to BankWest. This report includes the notation that the contract completion date for the project is 15 June 2010 (12 months construction contract for stage 1A)
- November 2009, BankWest late with progress claim payments (construction and soft costs). BankWest question soft cost budgets and disagree with budgets vs actuals and requirements to completion. Meeting with Bankwest and [redacted], to resolve, Bankwest releases soft cost payments.
- 1 December 2009 BankWest email (from Director of BankWest) is received, expressing that BankWest no longer wishes to remain involved with the project.
- 1 December 2009 - February 2010; [redacted] repeatedly attempts to get BankWest to a meeting to discuss formally its apparent change of attitude with respect to the project and its contractual obligations to fund.
- 2008 - 2009; [redacted] monitors and submits various submissions to local and state planning authorities with respect to the proposed zoning changes to the Mid North Coast Planning Strategy (Local authority 'Area 14' Master plan). [redacted] during this period advises BankWest of the status on a regular basis and submits information demonstrating a valuation uplift as a result, of between \$11.0 to \$15.0million. [redacted] propose a rezoning to the residual land on Lot 101 providing a very conservative yield of 300 residential lots. Average sale prices for residential lots in the area range between \$160,000 to \$196,000. 'Area 14' is the current growth corridor for the Port Macquarie Hasting council.
- February & March 2010; Bankwest fail to pay certified progress claims for certified building works to Bendix. These still remain unpaid by BankWest.

- March 2010; Mid North Coast Regional Strategy is released. Part of [redacted] land (Lot 101 is identified and included within the 'Area 14' Master Plan as future residential. 'Area 14' has been signed off by both State and Local government for re-zoning. [redacted], under the strategy, is eligible to lodge either a 'spot rezoning application' or lodge a full re-zoning application. As a consequence BankWest, at meeting held in CBA Boardroom, request appointment of Ernst & Young (E&Y), to undertake an uplift valuation assessment of [redacted] proposal.
- March 2010; work ceases onsite due to BankWest's failure to pay progress claims as authorized by Banks appointed QS. The project as a consequence fails with all contractors being formally dismissed by Bendix and work not re-commencing.
- Late 2010 BankWest, under the direction of it's new parent CBA exits the market segment. Staff and Directors within the team are either retrenched or transferred to other positions within CBA or BankWest.

Completed at this stage is;

- *Full design, civil and construction documentation.*
 - *Fixed price building contract to complete Stage 1 of the project in total (current DA approval).*
 - *All services (infrastructure to property boundary - water, sewer, power), major upgrade of McGilvray Road (with exception of top coat - not due till end of internal civil works), site earthworks and clearing.*
 - *All surveys, 9 housing pads (ready to take built form), and shopping centre pad.*
 - *7 pre-sales (deposits held in trust account); pre-lease commitments for medical and pharmacy; final negotiations for supermarket, cafe and restaurant.*
 - *Draft submission for rezoning application, 'Area 14' residential housing lots.*
- April 2010; [redacted] is notified, off the record by BankWest Director that BankWest managers (from CBA) held a meeting/s with LMW Valuer in an attempt to gain a re-valuation from LMW on the property at circa \$4.0million in an attempt to default on it's LVR. The Valuer refuses and as a consequence forwards an email to BankWest officers advising that their values are not in line with current market values.
 - June 2010 E&Y eventually provide the bank with an unfinished report on the Project and suggest a revised 'as is' valuation/opinion of circa \$12.0million. It must be noted that E&Y are not considered to be experts in this market segment.

From this period onwards, the relationship between BankWest and [redacted] becomes ve [redacted] rained and litigious;

- [redacted] continually attempt to reconcile the relationship and seek via third parties sale e property/project as well as sourcing alternative funding sources. All attempts are constantly hindered by BankWest.
- BankWest repeatedly ignores correspondences fo [redacted] q periods. BankWest also gave many verbal agreements over this period to [redacted] (exit strategy's), only to flip when a formal agreement is required.
- [redacted] secure, via independent agent, an offer to purchase the Retirement ponent 'as is' of the pro [redacted] property for approx., \$10.0million. Leaving the residual land holdings with [redacted].

- March - October 2010; Various legal actions ensue by [redacted] and its Builder (Bendix Group) against BankWest, including a formal Arbitration (Bendix and BankWest) and [redacted] instigating actions in the Supreme Court of Victoria to prevent receivers and managers being appointed by BankWest.
- BankWest instructs [redacted] to obtain a new Valuation with Colliers (circa May 2010)..., various issues arise during the valuation process, namely direct interference by BankWest with the valuer, and the report is terminated as a consequence.
- BankWest directly commissioned Colliers International to undertake new valuations in and around Julv/August 2010. The bank continually refused to provide copies of the valuations to [redacted] (valuation reports 6 & 7)
- October 2010 [redacted] receives abridged copies through disclosure in its court actions against BankWest. The valuation reports produced by Colliers, both dated 6 August 2010, value the properties respectfully at \$3.65million and \$2.15million The methodology used is not consistent with that as instructed by the banks for all previous valuation reports, in fact the methodology and considerations are highly prejudicial to the properties overall valuation.
- October 2010, as a consequence, [redacted] obtained two independent valuation opinions from prominent local real estate agents. Both opinions reflect current market conditions at that time; the opinions were \$27.10million average and \$25.095million average, respectively.
- March 2011 BankWest appoint E&Y as receiver and managers to [redacted].
- Circa August 2011 the bank attempts to tender the properties through receivers and managers with LJ Hooker appointed as selling agents.
- Circa October 2011 the bank attempts to auction the properties through receivers and managers with LJ Hooker appointed as selling agents.
- Circa November/December 2011 BankWest sells [redacted] properties and project for \$1.54million.
- BankWest in April 2011 issues Notice of Demand on the guarantors [redacted] claiming repayment of the loan facility to the value of \$21,66,530.99
- BankWest in November 2011 instigates actions to Bankrupt the guarantors [redacted].

BankWest by rolling over and increasing our existing facility (under CBA ownership) in April 2009 committed [redacted] and the itself to the completion of the DA approved project [redacted]. [redacted] at that time had the potential to either source other funding alternatives and or equity partners but instead chose to stay with BankWest as its partner in the delivery of the project. This we did as a direct result of its' (the bank) assurances that it was with us in this endeavour.

BankWest acted improperly, less than 7 months into the construction period, and in particular it failed to comply with its obligations of paying authorized progress claims under the terms of the loan contract directly creating/causing a series of events that ultimately prevented [redacted] from completing the works

within the time periods under the loan agreement. The bank at this juncture repudiated the loan contracts and should be directly responsible for all subsequent events that occurred.

Further, the actions of the bank of directly attempting to influence the valuation of the properties is inappropriate. Ultimately this action resulted in a valuation report (lets call them reports number 6 & 7) being produced by Colliers International that was not in accordance with previous valuation reports nor did it adopt the stipulated methodology of the loan contract. This allowed the bank to claim that [redacted] had breached its LVR ratio's.

In addition the bank, by virtue of the actions of its various officers, constantly hindered/mislead any attempt by [redacted] of concluding an exit strategy (either by sale, equity participation or alternative funding options), during this period. All of which were available to [redacted] and in fact achievable outcomes that would have seen BankWest paid out and the project proceed to completion.

Whilst we all risk assess whatever we do in life and business I can honestly state that this failure has not been a result of any wrong doing of the company or its directors and staff in any way. Not only has a sound company, project and employment opportunities for many been directly lost, the future homes of those that had decided to make [redacted] their retirement choice have also been lost to them.

Not only has this impacted in a major way on me personally but it has had an adverse impact on the lives and welfare of my family, my two sons in particular. In my attempt to rectify these unjust actions of the bank I have lost, been forced to sell, any remaining asset and have exhausted my entire life savings.

I no longer have a job or home and have been thrust into a circumstance of having to find rented accommodation to share with my two University student sons.

A sound company, it's employees jobs and the project were directly destroyed by the unnecessary and deliberate actions of the bank.

In conclusion it is my hope that through this Senate Inquiry a true understanding can be gained of the reasons behind the banks deliberate decisions to exit and that it (the bank) can be held to account for it's unconscionable, misleading and deceptive conduct in relation to it's actions.

Yours Faithfully,

Attachments:

1. Extract of LMW valuation dated 29 August 2006
2. Extract of LMW valuation dated 17 September 2008
3. LMW letter of validity dated 19 December 2008
4. BankWest email dated 1 December 2009
5. Extracts of both Colliers valuation reports dated 6 August 2010
6. Copies of Independent agent valuation opinions dated 6 & 8 October 2010 respectively.
7. Sworn Affidavits from lawyers (Atkinson Vinden) relating to LMW meeting with BankWest (circa April 2009) and Meetings and discussions with BankWest Directors.