

# Commonwealth Bank Group

Commonwealth Bank of Australia  
ABN: 48 123 123 124

Commonwealth Bank  
Tower 1  
Darling Park  
201 Sussex Street  
SYDNEY NSW 2000

1 December 2015

Reply  
GPO Box 2719  
SYDNEY NSW 2001

Ms Toni Matulick  
Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
Parliament House  
Canberra  
ACT 2600

Dear Ms Matulick,

## **Re: inquiry into the impairment of customer loans Question on Notice**

Thank you for your correspondence of 23 November 2015 in relation to four witnesses who have appeared before the Parliamentary Joint Committee on Corporations and Financial Services inquiry into impairment of customer loans. We are pleased to have the opportunity to respond to these matters.

If a business defaults on its loan, it is understandably traumatic for those involved. We do not for a moment question the distress which has been experienced by these customers and the personal impact of these events on them and their families.

However, in each case we do not agree with the characterisation of events.

### **Mr Rory O'Brien**

Bankwest and BOSI, a subsidiary of HBOS plc, lent \$175 million to Mr O'Brien's company for the development known as Whisper Bay at Airlie Beach in Queensland. Bankwest ultimately recovered \$30.26 million and BOSI \$18.73 million.

While large sections of Mr O'Brien's testimony are inaccurate and can be documented as such, we restrict our comments to key areas where we believe he has seriously misled the Committee.

### **Context of Mr O'Brien's Loan**

Mr O'Brien's original Airlie Beach project sought to build and sell high-end residential units. The average price of these units (approximately \$2 million) was set at about twice the price of other sales in the locality at the time. Further complicating this business venture was the onset of the Global Financial Crisis.

Today, even with the recovery of the Australian economy, we understand only 24 of 104 units have been sold. The most recent sales appear to have occurred in July and August 2015 for \$873,000 and \$695,000 respectively. No sales were recorded for 2014.

### Clawback Allegations

Mr O'Brien repeatedly claims that he was a victim of a "clawback arrangement". For example he claims: "it was in CBA's interest to impair those loans under the clawback because it provided CBA an effective guarantee from Bankwest where they could gain from the vendors of Bankwest – which were HBOS, Lloyds and, at that stage, the British government – full recovery of the Whisper Bay debt".

This claim is untrue. We categorically reject accusations that Commonwealth Bank manufactured customer defaults to reduce the purchase price of Bankwest.

Commonwealth Bank has provided a range of information to the Committee which illustrates that Commonwealth Bank did not, nor did it have the ability to, impair loans to reduce the purchase price of Bankwest (see our original submission to the inquiry, our responses to Questions on Notice dated 8 October 2015 and our response to Mr Trevor Hall's submission dated 8 October 2015); nor to reduce the wholesale funding payable to HBOS (see our response to Mr Hall's submission dated 8 October 2015); nor to benefit from payments under warranties (see our response to Questions on Notice dated 23 November 2015).

Mr O'Brien further testified to the Committee that his loan was referred to Ernst & Young as the Independent Expert and it found that "our loan was stable and unimpaired". This testimony is inaccurate.

We provided a copy of this expert determination to the Committee on 8 October 2015. As that illustrates, Commonwealth Bank considered that as of 19 December 2008, Mr O'Brien's loan was impaired and a provision of \$46.05 million was necessary. Since Commonwealth Bank and HBOS disagreed, Ernst & Young determined this matter.

Ernst & Young concluded that Mr O'Brien's loan was impaired, with indicators including:

- “(a) the borrower being in significant financial difficulty;
- (b) the borrower having breached their initial contract, through delinquency in interest and principal; and
- (c) the lender granting to the borrower a concession that the lender would not otherwise consider (extension of the facility and interest capitalisation).”

However Ernst & Young believed that at 19 December 2008, no specific provision was necessary.

Ernst & Young's finding that no provision was necessary and no adjustment to the purchase price was required in relation to this loan bound Commonwealth Bank to the outcome that there would be no reduction in the purchase price of Bankwest for Mr O'Brien's loan.

### Bankwest's treatment of Mr O'Brien at the expiry of his loan

By his own admission, Mr O'Brien's loan expired on 15 January 2009, having been extended from 30 November 2008 to allow Mr O'Brien time to address immediate cash needs and further costs. Letters were issued from BOSI and Bankwest on 19 and 23 December 2008 to Mr O'Brien confirming that the facility of \$175.9 million would be extended from 30 November 2008 to 15 January 2009 by which time the facility became due and payable.

Following expiry of the loan on 15 January 2009, an intense period of engagement took place between Mr O'Brien and Bankwest/BOSI until April 2009. During this period it became evident that there were other financial pressures on the development.

In particular Bankwest identified many unpaid trade creditors estimated to total around \$2 million, statutory demands being made on Mr O'Brien's company, a caveat lodged over the development by the project manager for over \$500,000 of unpaid fees, a charge against the land on which the development was built lodged by the Commissioner of Land Tax for unpaid land tax, and a writ of execution against the land levied by the local council for unpaid council rates.

Furthermore, Bankwest/ BOSI were notified in March 2009 that insurance premiums were unpaid and hence the asset was uninsured. Bankwest/BOSI urgently paid the insurance premiums to address this problem.

Due to the escalating financial concerns Bankwest's lawyers issued a demand letter on 6 April 2009 for a total debt of \$178 million. Further time was allowed to explore alternative funding before the appointment of receivers on 20 April 2009.

Mr O'Brien's claim that he received no correspondence from Commonwealth Bank for five months is misleading. There was no specific communication with Commonwealth Bank because it was not a party to the loan documents. However, there is extensive dialogue evident between Bankwest/ BOSI and Mr O'Brien throughout the period.

Hence, Mr O'Brien's claim that "CBA gave us 48 hours' notice to repay \$178 million" is also misleading, given the extensive discussions which took place between Mr O'Brien, his representatives, and Bankwest/ BOSI.

#### The completeness of his development and the actions of the receiver

Mr O'Brien claims that the project was completed "on time and on budget in November 2008". While the residential building itself had been issued with a certificate of practical completion, there remained the necessary work to convert the development to a five star resort, a requirement upon which many pre-sales were dependent. This required the development of a restaurant, a gym, a spa and a larger reception area – all to five star standards. There were also numerous defects which required rectification.

Mr O'Brien testified that there was \$106 million in presold apartments and that this money was "sitting in Mallesons trust account". This is untrue. First, we believe only \$100.5 million of possible presales ever existed, secondly, \$17.2 million of those presale contracts were never exchanged, and thirdly, a further \$25 million of presold apartments were to a buyer that was in receivership as of July 2008. A further \$7.9 million had been validly cancelled on 24 December 2008. As a result, only some \$50.5 million of presales were in the form of potentially enforceable contracts.

Of the potentially enforceable contracts, when it became clear that the five star resort elements would not be put in place, there was a further loss of \$23 million of pre-sales.

Further, contrary to Mr O'Brien's testimony, the receiver completed a rigorous process to sell the property.

In October 2009, the receiver tested the market for a sale of the property in its entirety, as well as preparing to sell apartments individually. A sale in entirety was preferred as individual sales would have taken more than 5 years to complete given expected oversupply of housing stock in the area. Indeed, in the 5 years since the sale, we understand only 24 units out of 104 have been sold, evidence that the strategy of selling the whole property was appropriate.

Finally, Mr O'Brien claims that "receivers did not proceed with the signed management agreement with Essque and Resorts of Dubai". This claim is incorrect.

Mr O'Brien had signed a non-binding Memorandum of Understanding with Essque which according to the document was "not to be construed as constituting a legal obligation of the Parties". The document expired on 31 December 2008 and no management agreement was ever in place.

#### Mr O'Brien's meeting with Commonwealth Bank on 29 April 2014 and subsequent settlement

Mr O'Brien's characterisation of his meeting with me (David Cohen) on 29 April 2014 bears little relation to the actual conversation which took place. This can be seen in **Attachment A**, which contains hand written, contemporaneous notes taken by Commonwealth Bank's Head of Dispute Resolution who attended the meeting.

Those notes demonstrate that:

- I did not offer Mr O'Brien \$1.8 million; rather Mr O'Brien requested \$8 million, an offer which I did not accept.
- The discussion touched on whether Commonwealth Bank might be prepared to pay an amount equivalent to the estimated legal fees Commonwealth Bank would incur in defending Mr O'Brien's legal action. Again, I did not accept this position.
- There was no "handshake agreement"; rather I said I was "not sure whether or not we will be able to help".
- I did not say "they always do what I say"; I said "we do not make their decision, but we do have influence".
- I did not say we were "keen to settle as ... [the] loan was in fact one of the loans [we] had tried to clawback from Bankwest vendors". I would never say such a thing, as there was no clawback and I have repeatedly stated so.

Finally, Mr O'Brien's claim that we "delayed any further communication with [Mr O'Brien] until the very last minute, after close of business on Friday 2 May" is demonstrably wrong. In fact, Commonwealth Bank's first email to Mr Leon Zwier (who acted as a facilitator in the discussion) after this meeting was at 1.51pm the following day (30 April) followed by 16 further emails from Commonwealth Bank to Mr Zwier over the following days. The offer of \$100,000 to Mr O'Brien was made at 11.15am on Thursday 1 May, not 6.00pm on Friday 2 May as Mr O'Brien claimed. Internal emails show that offer was accepted by 2.47pm on Thursday 1 May.

#### Mr Trevor Eriksson

In June 2008, Bankwest provided facilities to Mr Eriksson's company, Clergate, of \$7.5 million for the purpose of constructing a commercial building and for an overdraft facility. Bankwest has written off \$2.8 million in relation to Mr Eriksson's loans.

Again, while large sections of Mr Eriksson's testimony are inaccurate, we restrict our comments to several key areas.

#### Mr Eriksson's reasons for default

Mr Eriksson claims that Bankwest put him into default because he did not return a letter of variation. This is not accurate.

The letter of variation dated 9 April 2009 was issued by Bankwest to Clergate and was open for acceptance until 9 May 2009. The letter of variation proposed to extend the existing loans provided to Clergate. While Clergate did not return the 9 April 2009 letter of variation, even if it did a number of major conditions precedent to the variations approval were not met,

including Clergate failing to provide formal Development Application approval, a construction certificate, a building contract or lease. Clergate had not met its obligations in order to receive renewed funding.

To imply that a technicality surrounding the return of a single letter of variation was the sole reason Clergate's variation was not approved is highly misleading. It would not have been in the commercial interests of Bankwest to act in such an arbitrary manner.

Mr Eriksson testified to the Committee that, following Bankwest not extending the existing loans, Bankwest suggested that "if I had my own cash resources then perhaps I would pay that progress claim and then they would refund me". Email correspondence with Mr Eriksson at the time show that this was Mr Eriksson's decision, not Bankwest's recommendation. A copy of this correspondence is at **Attachment B**.

In February 2010, the loan facilities expired and it became evident that Clergate could not service interest.

Mr Eriksson testified to the Committee that he received a letter of demand for payment of his full loan and was only given 3 days to repay it in full. This is incorrect. Following a period of five months where Clergate failed to pay interest and received frequent contact from Bankwest about this failure to pay, Bankwest issued a demand on 24 June 2010 for full payment within 7 days. Payment did not occur.

#### The 2010 settlement with Mr Eriksson

Bankwest entered a mediated settlement in December 2010. Mr Eriksson had legal representation at that mediation.

Mr Eriksson alleges that during the mediation Bankwest deducted \$3 million off the loan amount which was "a sign of their guilt". Rather than being evidence of "guilt", the decision to reduce Mr Eriksson's debt by \$3 million was in fact a sign of Bankwest's good faith effort to resolve the situation. The purpose of mediation is to try to reach an agreed settlement and Bankwest made this concession to facilitate an acceptable outcome for all parties.

At mediation a timeframe was agreed to allow Clergate to repay \$5.85 million in instalments by 30 April 2011 and for Mr Eriksson to repay \$160,000 by 30 April 2012. The first instalment of \$50,000 due on 31 January was paid on 1 February 2011. Clergate then missed the remaining payments of \$450,000 on 31 March 2011 and \$5.35 million on 30 April 2011. Clergate also failed to provide its remittance of rental proceeds on 28 February 2011, as required by the settlement.

Breach notices were issued on 2 March, 1 April and 2 May 2011. Copies of these letters can be provided to the Committee.

Clergate's repeated failure to meet payment obligations and other requirements of the agreed settlement resulted in the appointment of Grant Thornton as Receiver in June 2011. Mr Eriksson's testimony that he met the requirements of the settlement by paying only \$50,000 of the \$5.85 million required of him by 30 April 2011 is completely untrue.

We also note that Mr Eriksson testified to the Committee that he withdrew from legal proceedings as a requirement of entering mediation. This is not accurate. The legal claim was discontinued following the mediation (it was not a precondition to mediation).

#### The action of the receivers

Mr Eriksson testified that receivers "only put two ads in the local paper" while attempting to sell his property. This is patently untrue.

**Attachment C** is Knight Frank's marketing report dated 10 October 2011. It shows the properties were marketed as follows:

- brochures posted to 3,524 potential clients;
- e-brochure sent to 1,900 Knight Frank database clients;
- advertised in the Sydney Morning Herald on 10 September, 17 September, 24 September and 1 October 2011;
- advertised in the Australian Financial Review on 13 September, 20 September and 27 September 2011; and
- advertised in the Orange Central Western Daily on 17 September, 24 September, 1 October and 8 October 2011.

#### The 2012 settlement agreement

Mr Eriksson claims that Bankwest reneged on a settlement agreement and that I wrote to him to say the reasons Bankwest did not proceed with settlement were threefold:

- the receivers had spent money on advertising;
- a payment of \$3500 was made to Norton Rose, not Bankwest; and
- Clergate was in liquidation.

These are not the reasons set out in the letter and a copy of my letter dated 19 October 2012 is at **Attachment D**.

#### Mr Eriksson's bankruptcy

Mr Eriksson claims that Bankwest is "vindictively" proceeding with a public examination of Mr Eriksson's affairs and his family. This is not accurate.

After Mr Eriksson became bankrupt, a trustee in bankruptcy was appointed over Mr Eriksson's estate. The trustee is investigating Mr Eriksson

#### Mr and Mrs Peter and Danielle Schaumburg

Mr and Mrs Schaumburg became Bankwest customers in 2007 and were granted a loan of \$3.9 million in relation to their bed and breakfast business known as Tree Houses of Montville.

By July 2008 the loan was put on Bankwest's watch-list due to deterioration in trading performance. At that time, profitability had declined below monthly interest repayments whilst the loan agreement called for profitability to be at least 60 per cent greater than repayments. At this point the Schaumburgs listed the property for sale.

In her testimony to the Committee, Mrs Schaumburg claimed that Bankwest forced them to break a fixed rate loan, which incurred a break fee of \$246,500 of which they were unaware.

These assertions are incorrect.

A letter from Mr and Mrs Schaumburg dated 12 September 2010 states "at the start of the GFC, Tree Houses made the hard choice of re-structuring the loan with Bank of Western

Australia by moving from 'fixed' interest only to 'variable' P&I". A copy of this letter is at **Attachment E**.

It was noted by the Schaumburgs at the public hearing that this change had a benefit through reducing their ongoing interest costs.

Evidence that the Schaumburgs were aware that there would be a break fee is in an email from Mr Schaumburg to a Bankwest officer dated 3 December 2008 in which he states: "is it possible to pay the exit fee from the fixed – Approx. \$212,000 deducted from the \$740,000". A copy of this email is at **Attachment F**.

Mrs Schaumburg further stated that Bankwest officers repeatedly verbally threatened to enforce the security it held in the form of the mortgage over their residential property. A search of the records available to us has found no evidence of these threats, nor would we approve of staff members acting in this manner.

However, correspondence from Ferguson Cannon Lawyers acting on behalf of the Schaumburgs dated 17 January 2012 to a Bankwest officer stated the following:

"As you are aware my clients finance facility with Bankwest expires tomorrow 18 January 2012. I confirm my understanding of our discussion that:

1. It is not the bank's intention to commence any enforcement proceedings if my clients cannot repay the money outstanding tomorrow, at this point in time;
2. It is the bank's intention to enter into discussions with my clients to reach an amicable resolution;
3. No steps detrimental to my clients will be taken without first entering into these discussions and providing reasonable notice."

A copy of this correspondence is at **Attachment G**.

With respect to allegations that Bankwest attempted to force a financial default by withholding statements, we acknowledge that there were delays in providing documents to the Schaumburgs, however there is no evidence to suggest there was any attempt to manufacture a default. Bankwest had no motivation, financial or otherwise, for this to occur.

We note in the Schaumburgs' testimony that they were dissatisfied about the use of CBRE Hotel and Leisure Brisbane to value their property for \$6,500 when they had obtained a quote from CBRE for \$4,500. The valuer used, who ultimately agreed a lower fee of \$6,000, specialised in going-concern and accommodation assets. The quote for \$4,500 obtained by the Schaumburgs was from CBRE Sunshine Coast who are considered more generalist valuers. The rationale behind Bankwest's decision was documented in a letter dated 6 September 2010.

It was noted at the hearing that frequent changes in staff responsible for managing the Tree Houses of Montville file made it difficult for the Schaumburgs to progress issues with Bankwest. We accept that this was likely the case and that a consistent approach would have been more helpful.

The Schaumburgs worked hard to try to save their business and meet all of their obligations. Due to their efforts, Bankwest granted them use of sale proceeds/ cash security for payment of various expenses, removed the LVR covenant when they were in breach and gave them a significant period of time to clear their debt.

Ultimately, the Schaumburgs repaid their obligations to Bankwest without the need to appoint receivers. Bankwest worked with the Schaumburgs over more than 6 years to reach this position from the time when the business was first listed for sale.

## **Mr Roy Lavis**

The CEC Group (CEC) was an ASX listed business operating in the civil engineering industry, and had been a Commonwealth Bank customer since 2004. Mr Lavis' primary allegation against Commonwealth Bank is that that an interest rate hedge arrangement was implemented in February 2008 without his consent and he was forced to sign a backdated copy of the arrangement in February 2009. This is not true.

The interest rate hedge arrangement was entered into on 14 February 2008 by CEC Company Secretary Kevin Lubbe. An audio recording of this agreement was taken at the time. A transcript of this audio file is at **Attachment H** and the original audio file can be provided to the Committee if required.

I also note that CEC made an announcement to the Australian Stock Exchange on 8 August 2008 which stated "the company undertook an interest rate hedge in February 2008". A copy of this announcement is at **Attachment I**.

Mr Lavis has alleged that had the interest rate hedge not been entered into, CEC would have been able to continue. Whilst it is acknowledged that the hedge that CEC entered caused an interest burden, the major factor in the demise of the company was the fact that its revenue reduced from \$210 million (June 2008) to \$156 million (June 2009) to \$91 million (June 2010). The company suffered losses of \$23 million and \$12 million in fiscal years 2009 and 2010 respectively.

In May 2011 CEC's directors placed it into voluntary administration (a report from the administrator dated 11 May 2011 noted significant debt owed to the ATO and that director penalty notice had been issued by the ATO). Commonwealth Bank ultimately wrote off \$57.3 million in relation to CEC's loan.

\* \* \*

We are committed to be as cooperative with the Committee as possible. If you or members of the Committee would like to discuss our response do not hesitate to contact me on  
or Euan Robertson on

Yours sincerely,

**David Cohen**  
**Group Executive Group Corporate Affairs**  
**Commonwealth Bank of Australia**

A

FILE NOTE

29/4/2014

Rory O'Brien  
Leon Zwier

David Cohen

1700-  
1820

DC - Without prejudice

LZ - Confidential as well.

DC - Recap LZ conversation.

CBA would not be bloody minded.

CBA lacks understanding of ROB's net worth.

LZ - (to ROB) CBA will need confidentiality.

No conversations with media.

DC - CBA sensitive to 'infection' of unhappy banking.  
May want agreed public statement, nothing  
else said

ROB - Understand, appreciate that.

LZ - ROB can tell his story.

DC - Esp net worth ROB - I used to have some.

DC - Opportunity to get off litigation track.

Understands genuine business impact on ROB.

LZ - <sup>ROB</sup> Should say anything he feels he should.

ROB - Has listened, first time he has heard these things

Not part of Unhappy Banking, has attempted to

distance himself.

His position is different.

No mileage in unhappy banking.

Mentioned daily media approaches.

LZ - We are here because we want to make a lasting peace.

ROB - Mentioned Egglestone speech - had no control over it.  
Brought in Leon following January DC (David Turner) letter.

Not on witchhunt.

DC - ROB loan was only loan on price adjustment list.

LZ - What is framework of settlement.

- Proceeding dismissed, counterclaim dismissed.
- Releases
- Non disparagement.
- Confidentiality, joint press release (exchange of views)

DC - Would want joint statement to contain form of words that from ROB perspective no problem re price adjustment mechanism.

LZ - Has spoken to Newlinds, that should not be a problem.

CT - May need withdrawal of claim.

ROB - would like to get FOB back from receivers / liquidators.

LZ - ~~Ated~~ Acknowledges CBA will need full releases.

All parties to bear own costs.

DC - Does this involve the exchange of money?

LZ - CBA contributes money it would otherwise spend on legals.

\$1.1m

- As a bid ask.

- Wants best and last offer.

DC - Decision depends on ROB net worth.  
ACS thinks there is value in the gitee.  
Their appetite to contribute money is low.  
What understanding can CBA gain?  
Mutual walk away.  
Can ROB help us by divulging assets?

LZ - Warranty from ROB?  
Statement from accountant.

ROB - Has lost everything, marriage, family, everything.  
Would not be here if he had anything.  
Had thought CBA would stabilise the project.  
March 2011 - letter from Ashursts.  
Ashurst spend of millions.  
Wanted to have this discussion three years ago.

ROB - Some details of Westpac dealings.  
Used ~~Wpac~~ 'Reid Constructions' - made offer to Wpac. Wpac rejected.

CT - Funding of litigation

LZ - Russell's funding litigation.  
- CBA costs helped

ROB

kicked the tin.

LZ - Not charging.

DC - GCS people have to be bloodhounds

ROB - Better for Wm to go on - has obligations to others.

DC - Understands ROB has nothing to lose.

LZ - Recent One-Tel dispute.  
Would like to avoid externals.

ROB - Will go back into a fight.

LZ - Draft something (CBA). Any \$ payment can be less than amt of legal fees.

DC - DC & CT will meet GCS. DC will say there is no value in pursuing guarantee. We do not make their decision but we do have influence.  
Will need to investigate whether the Bank has any ~~right~~ appetite to pay any money.

DC - No sense of what GCS answer will be.

ROB - Has nothing, owes people money Needs money to start again.

LZ - Send document to LZ.  
There is a burn rate.

DC - Will talk to GCS first thing Wed AM.  
(to ROB) - Who do you owe money to?  
What is the amt you need?

ROB - \$8M in Calderbank letter.

<sup>to ROB - DC was</sup>  
LZ - Testing the water.

DC - Hoping the money would not go beyond \$1.1m.

ROB - Feels obliged to friends and family.

DC - Not sure whether or not we will be able to help.

LZ - Lost an unloseable case last year.  
Came back to \$1.1m  
"Need to buy a lasting peace"

DC - GCS will not be happy about paying money.

LZ -  
In Sydney on Thursday

★ CBA to meet GCS.  
CBA to send terms to LZ.

LZ - Wants best and last CBA offer.

DC - Will tell LCS we only have one chance.

LZ - Will come back in binary way.

ROB - Want to turn tap off

B

Re: RTA Building

From:  
Sent: Thursday, 10 December 2009 10:18:40 PM  
To: Trevor Eriksson  
Cc:

OK Trevor your call, I will cancel the valuation with HTW. Hows the lease going with ADM this is getting embarrassing to have it take so long.

Bankwest Business  
Regional Manager, Property Finance

P Please consider the environment before printing this email

Trevor Eriksson To

cc

10/12/2009 07:00 au>  
PM Subject  
RTA Building

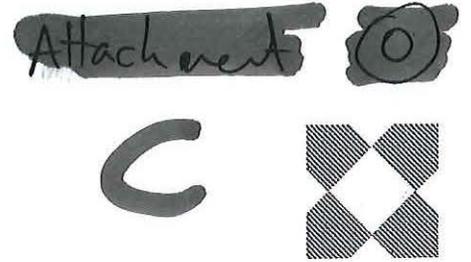
Phil I have been in Forster/Tuncurry for the past few days. Had a call from Drew Hall ( HTW) and he told me that you want him to value both Stunning and the RTA. WE already have a valuation for Stunning. Does this mean I dont have to pay for the Valuation done by Dupont for Stunning?

I have decided to fund the RTA construction by my cash resources as I am concerned that matters and documentation by all including Bankwest will not be in order to pay for construction prior to Christmas. Cannot have any further delays etc.

Will probably look to review matters after. So perhaps will hold on both QS and valuation.

Heading to Orange tonight so that I can meet up with Hugh B Gage lot tomorrow.

**Knight Frank**



10 October 2011

Grant Thornton  
Level 17  
383 Kent Street  
SYDNEY NSW 2000

Re: Lot 4, 1-3 Industry Drive, Orange

*"Marketing Report"*

We are pleased to provide you with our current and up to date response on your property from prospective purchasers.

Marketing activities to date includes:

- ✦ Contact all our current list of direct buyers (Database & Media);
- ✦ Follow up new enquiry;
- ✦ Brochures posted to 3,524 potential clients (hardcopy with Grant Thornton);
- ✦ Advertising as enclosed;
- ✦ Priority placements on internet sites.

Report Number: 1

Total Enquires 37			
Total Internet Hits Realcommercial.com.au	17	Total inspections to date	5
E brochure (Knight Frank Database)	1900	Information Memorandum requests	3
Active Mail – Direct Mail out	3524	Total contracts issued to date	3





The following is a summary of our action this week:

Marketing Activities to Date:

- The Information Memorandum has been distributed to all enquiries that have executed CA.
- The property has been loaded onto the internet and can be viewed at:

**Lot 4**

<http://www.realcommercial.com.au/property-land+development-nsw-orange-2916556>

- The property has been advertised as follows:

• Sydney Morning Herald	<b>Sat 10/9; 17/9; 24/9; &amp; 1/10</b>
• Australian Financial Review	<b>Tues 13/9; 20/9; &amp; 27/9</b>
• Orange Central Western Daily	<b>Sat 17/9; 24/9; 1/10; &amp; 8/10</b>

- Brochures have been distributed to 3,524 Businesses.
- Active Mail distribution list were completed on Monday 31<sup>st</sup> November 2011 and sent out Business Property Investors in various NSW locations.
- Inspections - 0 site inspections have been conducted.

Further Comments:

Increased activity this week with 4 requests for contracts. We trust this information is of assistance to you and look forward to this week's activity.

Yours sincerely

Managing Director



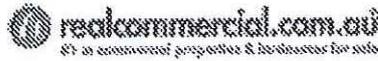


"Lot 4" 1-3 Industry Drive, Orange NSW

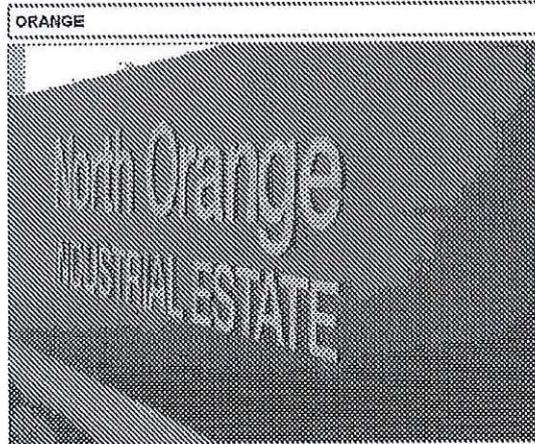
Advertisement for

[www.realcommercial.com.au](http://www.realcommercial.com.au)

<http://www.realcommercial.com.au/property-land+development-nsw-orange-2916556>

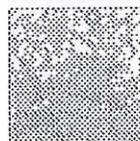


**FOR SALE** Property No. 2916556



**Knight Frank - Parramatta**  
 Level 3 J Horwood Place  
 PARRAMATTA 2150  
 Phone: 02 9761 1800  
 Fax: 02 9761 1501  
 Listing Agent /s/ Tony Gargano 0407 800 000  
 Listing Agent /s/ Derek Erwin 0409 828 790  
 Listing Agent /s/ Chris Brophy 0407 800 256

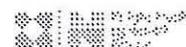
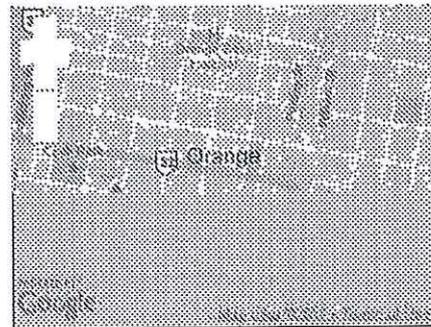
**Property Summary:**  
 Address: Lot 4, 1-3 Industry Drive  
 Categories: Land/Development  
 Contract Type: For Sale  
 Sale Type: For Sale - Exclusive  
 Land: 150009.00  
 Sale Price: Expression of Interest



**Industrial Subdivision**

For Sale - Exclusive Expression of Interest  
**LOT 4, 1-3 INDUSTRY DRIVE ORANGE**

• Site Area of approximately 15.00 hectares. • Approval for approximate 36 lot community title subdivision in accordance with approved concept plan. • Under instruction from Receivers & Managers. • Located in busy North Orange Industrial Estate. • Strong regional Centre. • Zoned 4 Industry & Employment. The subject land is being offered for sale and has potential for subdivision into approximately 36 lot community title subdivision.





"Lot 3 & Lot 4" 7 Industry Drive, Orange NSW  
Advertisement for  
**Sydney Morning Herald**



For sale by Expression of Interest closing  
at 4pm on Wednesday 26 October

### Superb residential land

71 Griffiths Drive, Seaford, SA

First time offered by over 100 years!

- 4.349 hectares\* (10,480 sq m) of residential land
- Includes subdivided 2 bedroom holiday homestead
- Ideal for residential / retirement / child care (etc)

**08 8233 5222**  
Tony Richards 0800 827 918  
Claire Harris 0407 272 007  
Level 26, 21 King William Street, Adelaide  
View at [www.knightfrank.com.au/173708](http://www.knightfrank.com.au/173708)



### Receivers and Managers Sale

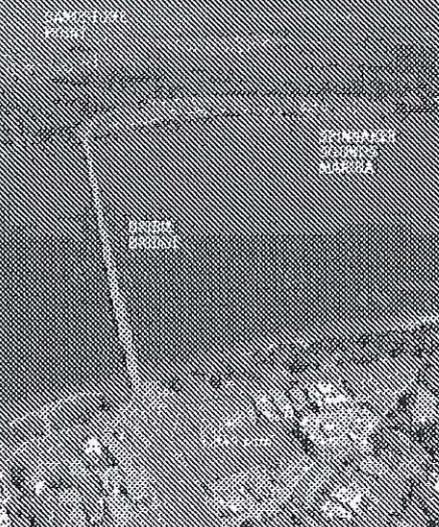
Industry Drive, Orange NSW

LOT 3: For sale by Public Auction  
8 year lease remaining with 2x 5 year options  
Annual income \$350K + GST + outgoings

LOT 4: Expressions of Interest  
15.9ha development for approx. 28 lot community  
the subdivision

Knight Frank 08 8233 1600  
Tony Richards 0407 809 000  
Chris Brophy 0407 606 258  
Brett Harrison 08 6202 8888  
John England 0410 269 252

**Grant Thornton**

For sale by way of Offer to Purchase closing  
Wednesday, 26 October 2011 at 5.00pm

### Owner Must Sell! Waterfront Apartment Development Site

Sylvan Beach Esplanade & Benzbyow  
Avenue, Brisbane, Queensland

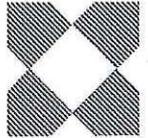
- Approved for 4 Right-to-Dwell (RTD Units)  
+ Residential Shop
- Approved with 2011
- Waterfront location with easy access to public ferry
- Adjacent to Brisbane CBD

Site area 2,349 sqm\*

**07 3246 8888**  
Jason Degen 0438 154 066  
Chris O'Donnell 0438 728 228  
10 Eagle Street, Brisbane  
View at [knightfrank.com.au/113301](http://knightfrank.com.au/113301)







"Lot 3 & Lot 4" 7 Industry Drive, Orange NSW

## Brochure

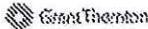
**For Auction**  
Secure Long Term Investment




- Site area 12,320m<sup>2</sup>
- Building area approx 3,950m<sup>2</sup> (Subject to e-codes)
- 6 year lease remaining at 50% x 3 year uplifts
- 20 years purpose built construction average for 10%
- National operating tenant, Grace Records Management
- Excellent - Industry - Employment
- Net Income of \$245,090.60 PA - GST
- Located in high cost industrial area in North Orange Industrial Estate

**Auction - 3rd November 2011**  
10.30am, Lot 3, 75 Pitt Street, Sydney

Under Instructions from Receivers and Managers






**John Rowland**  
045 859 252  
john@kfr.com.au

**Simon Rowland**  
045 859 252  
sim@kfr.com.au

**Tommy Grogan** 0457 859 200  
tommy.grogan@knightfrank.com.au

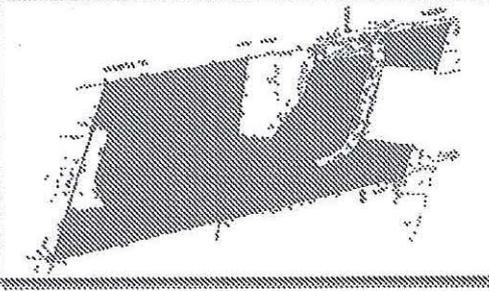
**David Ewins** 0459 829 799  
david.ewins@knightfrank.com.au

**Chris Drury** 0407 800 218  
chris.drury@knightfrank.com.au

Level 3, 3 Horwood Place, Parramatta

[knightfrank.com.au/2916756](http://knightfrank.com.au/2916756)

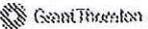
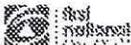
**For Sale by Expressions of Interest**  
Immediate Possession

- Site area approx 11,287 Hectares
- Approved for expansion of 18 lots to temporary tillie and division
- Zoned 4 Industrial - Easy to build
- Located in busy North Orange Industrial Estate with strong regional centre.

**Expressions of Interest - Closing 30th November 2011 at 5.00pm**

Under Instructions from Receivers and Managers


**John Rowland**  
045 859 252  
john@kfr.com.au

**Simon Rowland**  
045 859 252  
sim@kfr.com.au

**Tommy Grogan** 0457 859 200  
tommy.grogan@knightfrank.com.au

**David Ewins** 0459 829 799  
david.ewins@knightfrank.com.au

**Chris Drury** 0407 800 218  
chris.drury@knightfrank.com.au

Level 3, 3 Horwood Place, Parramatta

[knightfrank.com.au/2916556](http://knightfrank.com.au/2916556)





## Enquiry Register Lot 3 & Lot 4, 7 Industry Drive, Orange

Enquiry Register : Lot 3 & 4, 7 Industry Road, Orange.

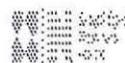
Enquiry No.	Enquirer	Contact	Lot	Area	General	Financial Review	Site Visit	Site Plan	Other	Comments	
1	14/08/2011	Ross Young	Ross Young	Lot 3	5	Australian Financial Review	No	No	No	No	Ross Young - private investor called from the 13.08.11 Tuesday AFR ad. Interested in getting a copy of the contract of sale and lease details pertaining to Lot 3, 7 Industry Road. Detailed construction of the property, government - including tenancy credentials, lease term. Have received email details and will forward contract of sale and lease documents upon receipt of signed confidentiality agreement.
2	18/08/2011	Stacks-Law	Mark Howard	Lot 3	5	Signboards	No	No	No	Yes	Waiting to receive executed CA.
3	15/08/2011	Expilaw	Ross Cole	Lot 3	5	General	No	No	No	Yes	Waiting to receive executed CA.
4	15/08/2011	Mardians Solicitors	Chris Macky	Lot 3		Signboards	No	No	No	Yes	Lot 4 - Mardians Solicitor.
5	16/08/2011	Law Henan	Law Henan	Lot 3	1	Sydney Morning Herald	Yes	Yes	Yes	Yes	Has requested contract for Lot 3 and Lot 4. Signed CA, will be attending auction.
6	16/08/2011	Ken Morgan	Ken Morgan	Lot 3 & 4	5	Sydney Morning Herald	Yes	No	No	Yes	Meeting next week. Sent CA.
7	16/08/2011	Allen	Law Allen	Lot 3 & 4		General	No	No	No	Yes	No further interest.
8	16/08/2011	Wendat Pty Ltd	Col O'Connor	Lot 3 & 4	3	Sydney Morning Herald	No	No	Yes	Yes	Expanding and Entworks business located in Lidgoc. Col is interested in knowing the asking price for the whole site. Detailed the sale to Col and we will send him relevant ECI documents.
9	22/08/2011	Hannay Property Group Pty Ltd	Greg Campbell	Lot 3 & 4	3	Australian Financial Review	No	No	Yes	Yes	Signed CA, sent ME for Lot 3 & 4. Awaiting to see level of interest.
10	22/08/2011	Lumley Developments	Simon Turner	Lot 4	0	Australian Financial Review	No	No	No	Yes	Waiting on him to get for Confidentiality needs.





11	22/08/2011	102M	Jim Warren	Lot 4	5	Australian Financial Review	No	No	No	Yes	Waiting on hard copies for Confidentiality Deeds.
12	22/08/2011	Blowers Real Estate	Conjunction Agent	Lot 4	5	Australian Financial Review	No	No	No	Yes	Waiting on hard copies for Confidentiality Deeds.
13	22/08/2011	Fanor Group	David Fanor	Lot 4	5	Australian Financial Review	No	No	No	Yes	Waiting on hard copies for Confidentiality Deeds.
14	22/08/2011	Loxford Group	Matthew Linfield	Lot 3	1	Australian Financial Review	No	Yes	Yes	Yes	Signed CA. will submit offer within the next week..
15	10/08/2011		Ross Simpson	Lot 4	5	Direct Mail	No	No	No	Yes	Waiting to receive executed CA Agreement.
16	10/08/2011		Michael Sharp	Lot 4	2	Sydney Morning Herald	Yes	Yes	Yes	Yes	Signed CA - has received all and Contracts.
17	10/08/2011		Lex Boardman	Lot 4	5	Sydney Morning Herald	Yes	No	No	Yes	Waiting to receive executed CA Agreement
18	10/08/2011		Peter Aziz	Lot 3	5	Sydney Morning Herald	No	No	No	Yes	Waiting to receive executed CA Agreement
19	10/08/2011		Jonathan Cliff	Lot 3 & 4	1	Sydney Morning Herald	Yes	No	No	Yes	Waiting to receive agreement - has inspected Lot 3 previously.
20	10/08/2011		Angela Rossetti	Lot 3 & 4	2	Sydney Morning Herald	Yes	Yes	Yes	Yes	Signed CA. Has received all a Contract.

Drop Out	
Lot 3	1
Lot 4	



## Commonwealth Bank Group

Commonwealth Bank of Australia  
ABN: 48 123 123 124

Commonwealth Bank  
Level 5 Tower 1  
Darling Park  
201 Sussex Street  
SYDNEY NSW 2000

Our ref:  
Your ref:

19 October 2012

Reply  
GPO Box 2719  
SYDNEY NSW 2001

Mr. Trevor Eriksson

Dear Mr. Eriksson,

I am writing to you following your letters to me and of 14 August 2012. In particular I am responding to your letter dated 17 September 2012.

It has taken considerable time to investigate the facts behind your concerns and I apologise for the time elapsed after receipt of your letters. However, in order to form an educated view it was necessary to spend time investigating the facts, making enquiries of Bankwest employees and its external lawyers and enquiring further once responses were received in order to test robustness.

This matter has been the subject of extensive correspondence between you and Bankwest and I do not propose to summarise or comment on all of the matters that have previously arisen. Instead I respond below on the particular concerns covered in your 17 September letter.

1 **Claim that Bankwest breached clause 20.3 of the Deed of Release through failing to provide information requested by Clergate.**

Clause 20.3 of the Deed of Release provides:

*20.3 The Bank and the Receivers agree to not make any oral or written communication to any person or entity which disparages, defames or has the effect of damaging the reputation of Clergate, Edinburgh, CWDC or Eriksson or otherwise acting in any way to the detriment of Clergate, Edinburgh, CWDC or Eriksson.*

The clause does not contain any requirement relating to the provision of information because the subject matter of the clause is limited to non-disparagement.

The only information requirements in the Deed of Release are contained in clauses 6.3 to 6.5

Bankwest's lawyers, Norton Rose, responded to you in relation to your concerns of non-compliance with those information requirements in their letters of 2 May 2011, and 14 June

2011 (enclosed) and I do not see any legal problem with the responses from Norton Rose.

It appears from my review that you have also raised concerns to the effect that Bankwest should have caused default listings to be removed from any credit files held by third party credit reference agencies. There is no obligation in the Deed of Release for Bankwest to notify any credit agency of the retirement of the Receivers. This was dealt with satisfactorily in my view, in the letter from Norton Rose dated 2 May 2011 (enclosed).

Given that clause 20.3 is limited to matters of non-disparagement and that the only information requirements are specifically contained in clauses 6.3 to 6.5, it is my view that clause 20.3 does not encompass any obligation to provide information nor the consequences of not providing requested information. In my assessment Bankwest and the receivers were not in breach of their obligations under clause 20.3 as a result of not providing the information requested.

**2 Claim that Bankwest appointed receivers in full knowledge that final settlement was imminent**

On 27 May 2011, and prior to the appointment of receivers, [redacted] sent an email to you, in response to a request by you for a meeting, which stated, amongst other things, that: *The Bank is willing to meet with you Tuesday morning, once settlement has occurred, to discuss the way forward on a without prejudice basis.*

No meeting occurred after settlement and on 1 June 2011, Bankwest re-appointed the receivers.

Bankwest re-appointed receivers following the occurrence of a number of events of default under the Deed of Release (these are detailed in, amongst other correspondence, the letter of 2 May 2011 and the without prejudice letter of 4 May 2011 from Norton Rose (enclosed)).

At the stage refinancing was being mooted, you and Clergate were already in default of obligations under the Deed of Release. Bankwest forbore from exercising its rights in respect of that default on a without prejudice basis, the conditions of which were, as set out in the letter of 4 May 2011, that you and your companies:

- a) pay or cause to be paid to Bankwest the \$450,000 payment and the \$5,350,000 payment required under clauses 5.1(2) and (3) of the Deed of Release, by no later than 5pm on 31 May 2011;
- b) pay interest at the Prescribed Rate agreed to on all outstanding amounts under the Deed of Release;
- c) discharge all other obligations required under the Deed of Release when required;
- d) provide Bankwest with updates on the progress of the funding application with ANZ, and the sale of the RTA/Stunning Windows building, by 3pm each business day; and
- e) provide any further information requested by Bankwest, within 1 business day of that request being made.

In all communications with you in relation to any refinancing, Bankwest and the receivers reserved "all rights, including their rights to rely upon any event of default constituted by non-payment of the \$450,000 required on 31 March 2011 under the Deed of Release, and the non-payment of the \$5,350,000 required on 30 April 2011".

You also failed, despite a number of requests, to provide evidence of refinancing. You did provide indicative terms sheets that were subject to conditions and credit approval. As

you are well aware, such indicative term sheets are not commitments to fund. A condition of Bankwest forbearance was that Clergate would introduce the bankers looking at its refinance. In your email of 28 April 2011 you wrote that your financial advisor will "also introduce Bankwest to the senior ANZ officer in charge of the approval process to verify that we are on track". In their letter of 6 May 2011, however, the solicitors for Clergate informed that Clergate would not provide the name of the person at the ANZ with whom they were dealing.

In my view, Bankwest's conduct in re-appointing receivers was reasonable and appropriate in circumstances where:

- a) the re-appointment followed a number of defaults by you in your obligations under the Deed of Release;
  - b) the re-appointment occurred where, at most, you had provided non-binding, indicative letters of offer to finance, subject to a number of conditions without any indication of how or when those conditions would be met;
  - c) no representations were made by Bankwest such that a person, acting reasonably, would think that Bankwest had accepted any offer from you; and
  - d) following on from (b) and (c) above, there was no indication that any settlement was likely.
- 3 **Claim that Bankwest reneged on the agreed settlement involving NAB despite Clergate paying Bankwest fees for preparation of discharge documents and settlement attendance.**

Negotiations concerning a possible settlement occurred whilst the receivers were appointed for the second time, and during the receivers' marketing and sale campaign of the properties over which they were appointed. Whilst the solicitors for the incoming financier did pay into Norton Rose's trust account money on account of fees should any settlement proceed, no fees were paid to Bankwest for discharge documents. When settlement did not occur, those moneys were refunded.

Those moneys were accepted on the condition that, as set out in Norton Rose letter of 14 October 2011; such acceptance and payment:

*should not be regarded as an acceptance by [Bankwest] of any offer to compromise the Total Amount Outstanding, other than in accordance with the proposed "closed-door" settlement.*

The proposed "closed-door" settlement did not occur, and there was no agreement to settle with you. Amongst other reasons, the settlement did not proceed because Clergate was subject to a winding up application brought by its former solicitors.

At all times, the communications between Norton Rose and your solicitors were expressed to be on the basis that (as set out in Norton Rose letters of 19 October 2011, 25 October 2011, 2 November 2011, 16 November 2011, 24 November 2011 and 29 November 2011):

*"[Bankwest] does not confirm that it will accept the offer proposed by [Mr Eriksson]; and*

*"for the avoidance of doubt, we confirm[ed] that Bank[west] has not accepted any offer from Clergate. The Receivers have not deferred taking any further steps in relation to the sale of the properties owned by Clergate. Until such time as the amount owing to the Bank is repaid, Bank[west] and the Receivers do not intend to defer taking steps to realise Bank[west]'s security."*

Further, in the letter from Norton Rose of 29 November 2011 (**enclosed**), they wrote that:

- Bankwest and the Receivers are well aware of their legal obligations in the circumstances;
- Bankwest will consider any offers on the merits and in its own interest, and for Bankwest and the receivers to comment on those reasons at that stage may be deleterious to the sale process;
- Bankwest had at all time considered all offers made by you having regard to proper and reasonable commercial considerations and on their merits;
- all offers made by you had been for amounts substantially less than the amount owing to Bankwest;
- the offer proposed by you may be unacceptable, in view both of:
  - a) your previous inability to comply with deferred payment arrangements; and
  - b) the delay for payment proposed in your settlement offer.

For these reasons, I am satisfied that your claim that there was an "agreed settlement" is without foundation. As there was no agreed settlement, Bankwest did not renege.

**4 Claim that the sale of Clergate's properties was for less than your settlement offer**

Your solicitor's letter of 25 November 2011 contained a proposal on terms that:

- Clergate pay Bankwest \$4,700,000 on completion (to occur within a short time) (and Bankwest was expected to provide full releases of all guarantees and securities);
- Clergate to pay Bankwest \$400,000 within 12 months (to be secured by a second mortgage over the Orange properties); and
- Bankwest to "retain and have the benefits of the proceeds of sale" of the Edinburgh property (in the order of \$220,000)

You asserted that the proposal was worth \$5,320,000. There were some fundamental problems in the proposal as it, if accepted:

- ignored Bankwest's pre-existing entitlement to the proceeds on sale of the Edinburgh property;
- would have resulted in you being released from your personal covenant to pay;
- contained a deferred payment arrangement. Bankwest was reluctant to enter into a further deferred payment arrangement in circumstances where you had previously failed to comply with such an arrangement (and this non-compliance was the basis upon which the receivers were appointed for the second time); and
- did not guarantee Bankwest a higher return than that which it may have obtained, based on the receivers' valuations, on sale.

Further, this proposal, in substance, guaranteed the Bank only a return of \$4,700,000, and a speculative return of \$400,000.

In the circumstances it was reasonable for Bankwest to proceed with the sale and avoid the need to enter into a deferred payment arrangement with you.

5 **Your recent settlement offers**

You and [redacted] had an exchange of emails in March 2012 which ultimately resulted in [redacted] requesting clarification as to whether you were offering to pay \$1.464M to resolve the matter. You did not provide a response confirming if that was your position.

Your 5 July 2012 letter to [redacted] contained an offer that Bankwest pay you \$3M which appears out of step with the email exchanges you had with [redacted] in March. If your current position is that you require Bankwest to pay you the sum of \$3M to resolve the matter that offer is declined. I appreciate that you will be disappointed with the decision not to settle your claims on the basis you proposed. In view of the facts surrounding your claims, as I have been able to ascertain them, it would not be appropriate for Bankwest to reach an arrangement that involved Bankwest making a payment to you. If you have any proposal where you are prepared to pay Bankwest a sum of money to resolve the matter please provide details to Bankwest so that it may consider the proposal.

Yours faithfully,

✓David Cohen  
Group General Counsel  
Commonwealth Bank of Australia

E



12 September 2010

Bank of Western Australia Ltd  
 Sunshine Coast Business Centre  
 Level 2, 17 Southern Drive  
 MAROOCHYDORE QLD 4558

Dear Sir,

**RE: TREE HOUSES OF MONTVILLE**

We are in receipt of  
 subsequent letter from  
 September 2010.

(Business Development Manager) letter of 27 August and  
 (Business Service Quality Coordinator) dated 6

Whilst we acknowledge that we did not meet your banks terms and conditions with regards to meeting all of your financial requirements for the 09/10 financial year, we would like to request a relaxation in the requirement to proceed with another valuation for the following reasons -

- Bank of Western Australia currently has the following equity over our loan -
  - Tree Houses of Montville (last valuation November 2008 of \$4.03million)
  - Residence at 5 Rosea Court, Currimundi (last valuation November 2008 in excess of \$500,000)
  - Cash deposits of again over \$500,000
- Cash reserves for the business of over \$100,000

We acknowledge that the profit of the business had dropped by \_\_\_\_\_ for the financial year and for this reason, we have become even further pro-active and recently implemented the following -

- Danielle Schaumburg has dedicated two days a week to work 'on' the business rather than 'in' the business to promote the resort further. Since proceeding with this change of responsibility, the following has occurred -
  - The services of a Business Mentor subsidised by the Qld State Government
  - The implementation of a thorough and comprehensive Business Plan (currently being reviewed by Business Mentor)
  - Website upgrade/improvement by a website design company to best utilise Search Engine Optimisation/Blogging/Twitter
  - The review of implementing an online booking system
  - In depth one on one discussions with Director of Tourism Qld (Sunshine Coast) to best capture domestic, international visitors and conferencing

- An invite by Tourism Qld to promote our business to key personnel at TQ Headquarters in Brisbane
- A meeting has been arranged for Australia Zoo Travel and Marketing staff to discuss mutual opportunities for both businesses
- Discussions have commenced with Queensland Newspapers as to how best promote our resort with the view of hosting a travel writer to write a review in the Sunday Mail

We would like to take the opportunity to give you an overview of previous decisions/advice given by Bank of Western Australia.

At the start of the GFC, Tree Houses management made the hard choice of re-structuring the loan with Bank of Western Australia by moving from 'fixed' interest only to 'variable' P&I. This was a huge cost of over \$240,000 to the business and the greater part of the decision making process with doing this was because we were advised by the bank that it would take a great deal of 'pressure' off the business by the bank. We seem to however, be back to 'square 1'.

Another ongoing concern that the partners have with Bank of Western Australia is that nearly 2 years ago, [redacted] sold their family home (that was equity to the bank) at a profit with the view to purchasing another property. It was not until the contract of sale was unconditional that Bank of Western Australia advised that the funds on settlement of sale would not be released and instead would be utilised as a 'cash reserve'. This left the [redacted] Family without a family home and they had no choice but to live at Tree Houses of Montville which was not the 'ideal' situation for them and their children.

Further, since commencing a relationship with the Bank, we have had no less than four Business Development Managers. This lack of continuity has made it extremely difficult to form relationships.

Tree Houses has not once been in default of loan payments and readily provide all required quarterly financial requirements for review in a timely manner. Bank staff has previously commented on management's professionalism with this information.

---

As you can see from the above, Tree Houses Management has always been accommodating to the Bank and is furthermore dedicated to improving the business after the losses incurred during the GFC.

Tree Houses Management is not asking for a decrease in monthly mortgage payment but would very much appreciate flexibility by Bank of Western Australia in working through this difficult period by waiving the requirement of a valuation (of up to \$7,000) and also to work more closely with us with positive dialogue that is mutually beneficial for both parties.

We look forward to hearing from you.

Kind regards,

Vikki & David Barnard

Danielle & Peter Schaumburg

F

Hi Danielle,

Just confirming that we are in the process of assessing this proposal and will come back to you shortly about this.

In the meantime we are going to need the paperwork for the sale settlement signed and returned to the bank if not in hard copies please email or fax through soft executed copies prior to settlement as this will only delay the process.

Obviously this is only a short term measure pending a formal rework of the loans etc.

In due course we will also need your personal tax returns x 4 to complete the picture.

The valuation fee is payable but lets wait until the dust has settled before making payment.

Kind Regards

Business Development Manager  
Commercial Banking  
Bank of Western Australia Ltd  
Level 2 / 17 Southern Drive, Maroochydore Qld 4558

03/12/2008 12:30 PM

Chris,

What do you think of this proposal.

Vik/Dave - \$900 000.00  
Less their loan - \$60 000.00  
Less Vik's requirements - \$100 000.00  
Leaving \$740 000.00.

Is it possible to pay the exit fee from the fixed - Approx \$212 000.00 deducted from the \$740000.00.

Leaving \$528 000.00

This could then be put in an account against Tree Houses as debt reduction.

Our repayments would then be approx \$20K. Our 1.6 would take us up to approx \$32K. Certainly more achievable than \$46K.

Is this suitable for Bank West??

I realise that you would have to get approval from your credit department but is this a possibility.

Pete

Tree Houses of Montville

*ml*  

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(In Archive) Fw: Tree Houses of Montville  
Peter Egan  
to:

Archive: This message is being viewed in an archive.

1 Attachment



Image001.jpg

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Subject: Tree Houses of Montville

Dear Peter ,

Thanks you for taking the time to speaking with me this afternoon. I confirm that I act on behalf of the owners of the Tree Houses of Montville.

---

As you are aware my clients finance facility with Bankwest expires tomorrow 18 January 2012. I confirm my understanding of our discussion that:

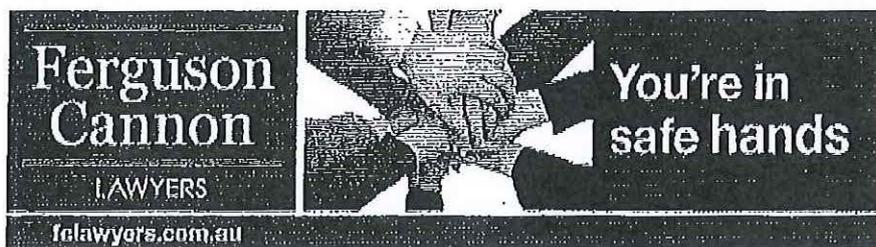
1. It is not the banks intention to commence any enforcement proceedings if my clients cannot repay the monies outstanding tomorrow, at this point in time;
2. It is the banks intention to enter into discussions with my clients to reach an amicable resolution;
3. No steps detrimental to my clients will be taken without first entering into these discussions and providing reasonable notice.

If any of the points raised above are not a correct interpretation of our discussion please let me know immediately.

I have arranged for my clients to meet with you onsite at the Tree Houses of Montville at 11am next Tuesday 24<sup>th</sup> January. I will also be in attendance. I will be meeting with my clients beforehand so that we can put a proposal to you, and hopefully reach an agreement that day.

I look forward to meeting with you.

Kind regards,



BRISBANE Level 25, 239 George Street, Brisbane QLD 4000 P +61 7 3035 4000 F +61 7 5443 8806  
SUNSHINE COAST Level 1, 17 Southorn Drive, Maroochydore QLD 4559 P +61 7 5443 8800 F +61 7 5443 8806

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H

Recording – (FROM THE 14/2/2008)

K Hello

L Oh g'day

K It's been a hundred bloody metre run... I heard it ring and I was down the passage and it's a long passage.

L You probably don't get enough exercise as you work too much.

K I do, I do, definitely, um, but I could do with some more I reckon, yeah, ok.

L Ok, just ..... at 8.17 the structure now.

K Ok.

L Now, what I will do is read it back to you, you ready?

K Yes, yes.

L 8.17, we're doing monthly roles and it is going to be referenced against BBSY, and we need a right to break just to line up the facility which is the twenty eighth of the second '08, anyway, um, a cap for twenty million for five years, starting out at the fifteenth of Feb.

K Hang on a cap for five years, starting at the fifteenth of...

L February '08

K Fifteen two '08, yep, that's twenty million.

L Twenty million.

K Yep.

L And so that is going to go to two thousand and thirteen.

K Yep.

L Ah, the swap will start at eighty million for three years.

K Hang on so it will start at eighty million for...

L Three years.

K For three years, yep.

L So from the fifteenth of the second '08 to eleven.

K Hang on, fifteen two '08 to fifteen two eleven, yep.

L Then we're going down to fifty five million for four and five years.

K Hang on, fifty five million, for...

L For year four and five, so twelve to thirteen.

K For four, year four and five.

L So twelve and thirteen, then we are going down to fifty million for fourteen to fifteen, so finishing on fifteenth of the second two thousand and fifteen.

K Yeah, so sorry, I will just, hang on, eleven that's so so that's from ah fifteen two one one the one above it just do fifteen two one three, isn't it?

L Yes

K And then the last one, fifty million for how long?

L From the two thousand and ah thirteen to two thousand and fifteen. So...

K Two years, for two years.

L Yeah, so year...

K So two years, which is basically fifteen two one three to fifteen two one five.

L Yep, and that's per strategy one in the paper...

K Yep, that's fine. You can, you'll just confirm this in writing anyway won't you?

L You'll, you'll receive confirmation if not this afternoon, tomorrow morning.

K All right, ok, ok.

L Ok, and I'll ah better start lock in some hedging, so I'll talk to you later Kevin.

K All right that is fine, so that's that's done at at ah you've obviously got it at I mean the eight point one seven is the fixed rate and then obviously the cap you got a...

L That's at eight point one seven as well.

K That's at eight point one seven, er ok cause that, yeah and then you got all that other thing that drops below there and whatever and whatever, we still pay the eight point one seven, anyway.

L So you pay eight point one seven on the spot portion, but on the cap portion you pay the the lesser of the variable rate or eight point one seven, so...

K Yeah, so if it drops below eight point one seven, we pay the lower one, but we won't pay higher than eight point one seven.

L Yes.

K On on on the cap portion.

L Yes.

K Ok.

L No worries?

K And the fixed portion, is the the the eighty million, yep?

L Spot on.

K All right, so if you just give that to me in writing, so what I would like that to do is 'cause as I said is that when I send out my board reports on Monday, I'd like to basically put it in there.

L Ok, I will send you a confirmation shortly.

K And if you could just tell your internal peoples, 'cause Greg was quite adamant about you notifying the people...

L Credit?

K Like Rod Flude and people like that.

L I will definitely let them know.

K Ok

L Thank you

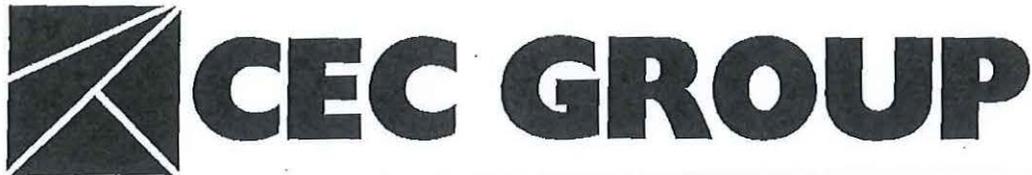
K Thank you

L See you

K Bye bye.

*Close*

I



**ASX ANNOUNCEMENT**

8 August 2008

**Earnings Guidance and  
Changes to Management and Audit and Risk Management  
Committee**

**Earnings Guidance FY 2008**

Cairns based property development and civil construction company, CEC Group Limited (ASX:CEG) advises that the FY 2008 result has been adversely affected by the downturn in the property market and through losses on asset sales which were required to reduce debt levels.

In June 2008 CEC announced that it expected a loss after tax in FY 2008 of between \$6M and \$15M before any impairment of goodwill and property, plant and equipment. At that time, CEC advised that total goodwill on the balance sheet amounted to \$23M.

A number of asset sales currently planned for FY 2009 have been analysed and, where these are projected to make losses in the FY 2009 year, provision has been made against inventory as at 30 June 2008.

In addition:

- Following a review of goodwill and property, plant and equipment, an impairment of \$4M has been made,
- the company undertook an interest rate hedge in February 2008 which has a mark to market fair value loss of \$1.6M as at 30 June 2008 due to a softening of the forward interest rate curve. Under accounting standards requirements for assessing "hedge effectiveness", this mark to market loss will be recorded in the income statement in FY 2008,
- Impairment of \$2.5M has been recorded against a receivable relating to a development in Cairns, as at 30 June 2008, and under accounting standards requirements, there is insufficient certainty of a project restart to allow an impairment to be avoided.

CEC is hopeful of a restart to the project in question and payment in full of outstanding amounts, and the impairment will be reversed if a positive conclusion is reached prior to signing of the accounts, and

- Other recent asset sales to reduce debt have resulted in additional losses. Information relating to the reduction of debt levels by CEC Group has previously been disclosed to the market.

Whilst the FY 2008 result is yet to be audited, the pre-audit consolidated loss before tax (after impairment entries) is expected to be approximately \$33M.

### **Debt Reduction**

CEC is focused on debt reduction, with total facilities (bank loans, overdrafts and guarantees) with our major banker now at \$90M. The Company intends to reduce this debt below \$80M by 31 October 2008 and also will look to secure a longer term facility to position the company for sustainable future growth.

### **New Senior Management Structure**

The Board is pleased to announce a new management structure designed to provide for greater focus on driving improvements within its operational business units, to improve performance in key safety and environment areas and to provide more internal capability for strategic and corporate finance initiatives including balance sheet structure, whilst also strengthening succession planning. The senior management structure will encompass:

- Chief Executive Officer (Roy Lavis),
- Chief Financial Officer,
- Chief Operating Officer, with full operational responsibility for operating sites within Civil Construction and Building Materials businesses, and
- General Manager – HR, with responsibilities including human resources and organizational development.

A search has commenced for a person to take up the new role of Chief Operating Officer.

### **Chief Financial Officer (CFO) and interim General Manager, Business Improvement**

Mr Darren Smith has resigned as Chief Financial Officer effective from 15 August 2008. Mr Kevin Lubbe, CEC's Company Secretary will become Group Financial Controller/Company Secretary until the appointment of a new CFO.

An interim General Manager, Business Improvement is expected to commence with CEC Group in the week ended 15 August 2008 to lead the groups restructuring activities. It is expected that this role will continue until at least 30 November 2008.

