

## **SUBMISSION:**

**June 2017**

**A submission to the issues raised in the supplementary issues paper.**

**Review of the financial systems of the banking and finance industry.**

**Roy Lavis – CEO of The CEC Group Limited**

**Public Listed Company on the Australian Stock Exchange in 2004**

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**CBA email dated 21 November 2007 applauding CEC Group's business management.**

### **Annexure 2**

**CEC Group property portfolio**

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**Letter of Approval from CBA Bank dated 12 February 2008 stating facility now \$161,500,000.00**

### **Annexure 4**

**Minutes of Meeting of Board of CEC Group dated 8 February 2008**

## 1. BACKGROUND

The CEC Group was founded in 1977 and traded profitably for over 30 years without default or any missed bank payments until the 3 years and 3 months horror period after the 15 February 2008.

**(Refer Annexure 1)**

Over that 30 year period of time CEC Group along with its joint venture partners grew its staff number to over 750 people in Mackay, Townsville, Mount Isa, Cooktown, Mareeba, Innisfail, Atherton Tableland, Port Douglas, Central Queensland coal fields, Port McQuarrie, Mossman and Cairns.

In 2004 CEC Group was listed on the Australian Stock Exchange and CBA Bank became its financier in that same year. The financial results for the 4 year period up until 2007 financial year were as follows:-

<u>Year</u>	<u>Income</u>	<u>EBIT</u>	<u>Tax</u>
2004	\$64,321,000	\$10,433,000	\$2,890,000
2005	\$106,997,000	\$10,214,000	\$3,020,000
2006	\$108,910,000	\$13,090,000	\$5,150,000
2007	\$143,400,000	\$20,360,000	\$7,330,000

The CEC Group's property segments had the interest on loan moneys capitalised and paid down at 70% of sale proceeds at each allotment settlement. The 2007 calendar year saw 742 allotments sold and settled with an average price of \$140,000.00 each. The CBA Bank's loan facility was a come and go facility being paid down and drawn back up as and when required.

## 2. Make up of the CEC Group

The CEC Group had four major segments specialising in:-

1. Civil Construction –
  - (a) Road construction
  - (b) Bridge and wharf construction
  - (c) Airport runways and taxi ways
  - (d) Sewer reticulation and treatment
  - (e) Water, power and telecommunications
  - (f) Marina and boardwalks, rock revetments
  - (g) Channel dredging and aquaculture ponds
  
2. Construction Materials –
  - (a) Quarry products
  - (b) Concrete batching and supply
  - (c) Asphalt manufacture and laying
  - (d) Spray seal bitumen

3. Waste Management –
  - (a) Waste collection – domestic and industrial
  - (b) Treatment
  - (c) Residue applications in agriculture
  
4. Building –
  - (a) Residential units and houses
  - (b) Industrial sheds and complexes
  - (c) Commercial buildings and precincts
  
5. Property Development –
  - (a) Residential, industrial and commercial subdivisions
  - (b) Integrated community developments

The property portfolio shows that in a ten year period the proceeds top \$1.1 billion with a development cost of less than \$700,000.00. **(Refer Annexure 2)**

The CEC Group's activities were overseen by a Board made up of a Solicitor, an Accountant, ex Premier of Queensland, the Federal Member for Leichhardt, the manager of the Pioneer Concrete joint venture and myself – the CEO of CEC Group since its formation in 1977.

### **3. Contract with CBA Bank**

The facility contract that CEC Group had with CBA Bank was the same as 99.9% of all contracts in that the terms between the parties are unbalanced, unfair and are negotiated in an environment where there is an imbalance of power.

If companies or individuals do not accept the terms then there is no deal, a huge blow to the Australian economy as small business employs over 90% of non-government employment.

If CEC Group, as a civil construction contractor, offered a subcontractor a document that stated that CEC Group could terminate the subcontract at any time for any reason then CEC Group would not be in business for very long.

This illustrates the imbalance of power that banks have.

### **4. Actions of the CBA Bank against CEC Group during the GFC**

After negotiations the CBA Bank advanced the CEC Group of over 70 individual companies approximately \$160.0 million. The facility agreement was to expire on 28 February 2008 and replaced with an agreed new facility arrangement. On the 12 February 2008 a combined Letter of Approval and Letter of Offer arrived saying that CEC Group's new facility was now \$161.5 million.

**(Refer Annexure 3)**

At the same time, after considerable pressure from CBA Bank, CEC Group agreed to a \$100.0 million hedge arrangement to support the \$161.5 million borrowing. (CEC Group Board agreed to the hedge but only on the signing of the \$161.5 million facility documents.)

**(Refer Annexure 4)**

As the CEO of CEC Group I was summoned to the CBA Bank's branch in Brisbane on 15 February 2008 where I was told that CEC Group was to reduce the debt. CEC Group sold non-producing assets down to meet CBA Bank's \$80.0 million target by the nominated time frame of 31 October 2008.

By this time it was apparent that CBA Bank was deducting interest from the operation based on a \$100.0 million hedge. Disagreement erupted between the parties based upon CBA Bank extracting interest on a \$100.0 million hedge when the balance was now below \$80.0 million.

In August 2008 under the rules of continuous disclosure by the Australian Stock Exchange, CEC Group had no option but to report that there was a \$100.0 million hedge in place.

In February 2009 CBA Bank sent new facility documents for \$80.0 million with conditions to reduce the borrowing down to \$65.0 million within 12 months with the \$100.0 million hedge still in place.

Backdated to 14 February 2008 ISDA (International Swap and Derivative Association) "ISDA" document and schedule were sent to CEC Group to sign to legitimise the CBA Bank's actions of the previous 12 months as well as their go-forward position. The explicit directive from the CBA Bank was to sign such document or else there would be no facility.

## **5. Fallout from CBA Bank's actions**

CEC Group went from an employer of choice and an icon in North Queensland to tatters all because of the CBA Banks' greed. Apart from the joint venture companies making up 150 employees, the remaining 600 employees either had to find new employment or go on the dole. The economy of the region still has not recovered.

Many millions of dollars are still owed to suppliers and subcontractors and my wife and myself have been declared bankrupt and living on aged pension.

The CBA Bank did the same to many thousands of their clients without fear of recourse.

## **6. CBA Bank's reasons for their actions against CEC Group**

- (a) When CBA Bank demanded that CEC Group pay down debt on the 15 February 2008 the reason was that the company had too much debt – this after 3 days earlier approving a \$161.5 million facility.
- (b) During the Joint Senate Inquiry the CBA Bank was asked why they took the action that they did and the response was that CEC Group was borrowing money to pay their interest.
- (c) When the Small Business Ombudsman, Kate Carnell, asked the same question the answer was that CEC Group was about to embark on a large project that it could not afford.

- (d) Another excuse was that CEC Group was not trading within its covenants. However, CEC Group reporting period wasn't until the 28 February 2008 and the Board report in December 2007 showed year to date \$19.0 million EBIT with \$31.0 million of unconditional property contracts signed with deposits taken.

## **7. Recommendations to the Panel**

1. Facility Contracts should be more balanced.
2. Facility Contracts should not reflect the enormous power of banks.
3. Independent body to evaluate claims of contract imbalance.
4. Banks already price factor in risk when tendering a loan facility, therefore there should **not** be personal guarantees for corporate borrowing.
5. Independent body to adjudicate on disputes with powers to give judgement on a simplified facility contract and a regime of penalty fines.
6. Banks not be allowed to act on non-monetary defaults.
7. No limit to size of company for redress.
8. If a company is in financial trouble, a stand-still provision put in place for 6 – 12 months to allow for potential workout or facility review.
9. The unethical, unconscionable, sometimes illegal and criminal conduct by the banks as has been uncovered must stop immediately.
10. Victims of this behaviour should be compensated quickly.
11. Large claims could have negotiated stepped compensation payments and conditions.

All of these recommendations are in line with the motherhood statements of the banks stated at various enquiries held to investigate their bad behaviour.

The recommended Tribunal should have retrospective powers to compensate victims going back at least pre GFC and to happen immediately so that there are no more victims of this outrageous behaviour.

All other corporate entities in Australia work within a set of rules. If companies step outside those rules they are penalised and fined. (The same rules must apply to our banking industry otherwise the economy will fail.)



ANNEXURE 1

RL 3/12

[REDACTED]

[REDACTED]

I've attached a copy of an updated research paper released yesterday off the back of [REDACTED] comments at Commsecs Emerging Corporates Conference last week.

<<CEC Research 2007 11 21.pdf>>

I don't know about you but I continue to have a little laugh at [REDACTED] comments on page 13 of the original report dated 14 November where he states "...CEC Group should be applauded for its ability to manage working capital effectively whilst building a large land bank portfolio, Commsec believe that their balance sheet could be used even more effectively in the future" He has no idea of how hard we have all worked to achieve this but at least its nice to have our efforts with debt and capital management recognised even if it took [REDACTED] 13 pages to do so! I'll have to put the thinking cap back on to come up with some ideas to meet his expectations re more effective use of the balance sheet.

[REDACTED] thank you again for presenting at the conference last week we really appreciated your time and hope you ended up getting some rest after the travel of Thursday particularly following Wednesday nights dinner with the PM.

It is really a very great personal pleasure for me to be able to show off clients particularly ones where we have had the opportunity to work closely through the growth times.

Regards

[REDACTED]

**Commonwealth Bank**

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Our vision is to be Australia's finest financial services organisation through excelling in customer service.

\*\*\*\*\* IMPORTANT MESSAGE \*\*\*\*\*

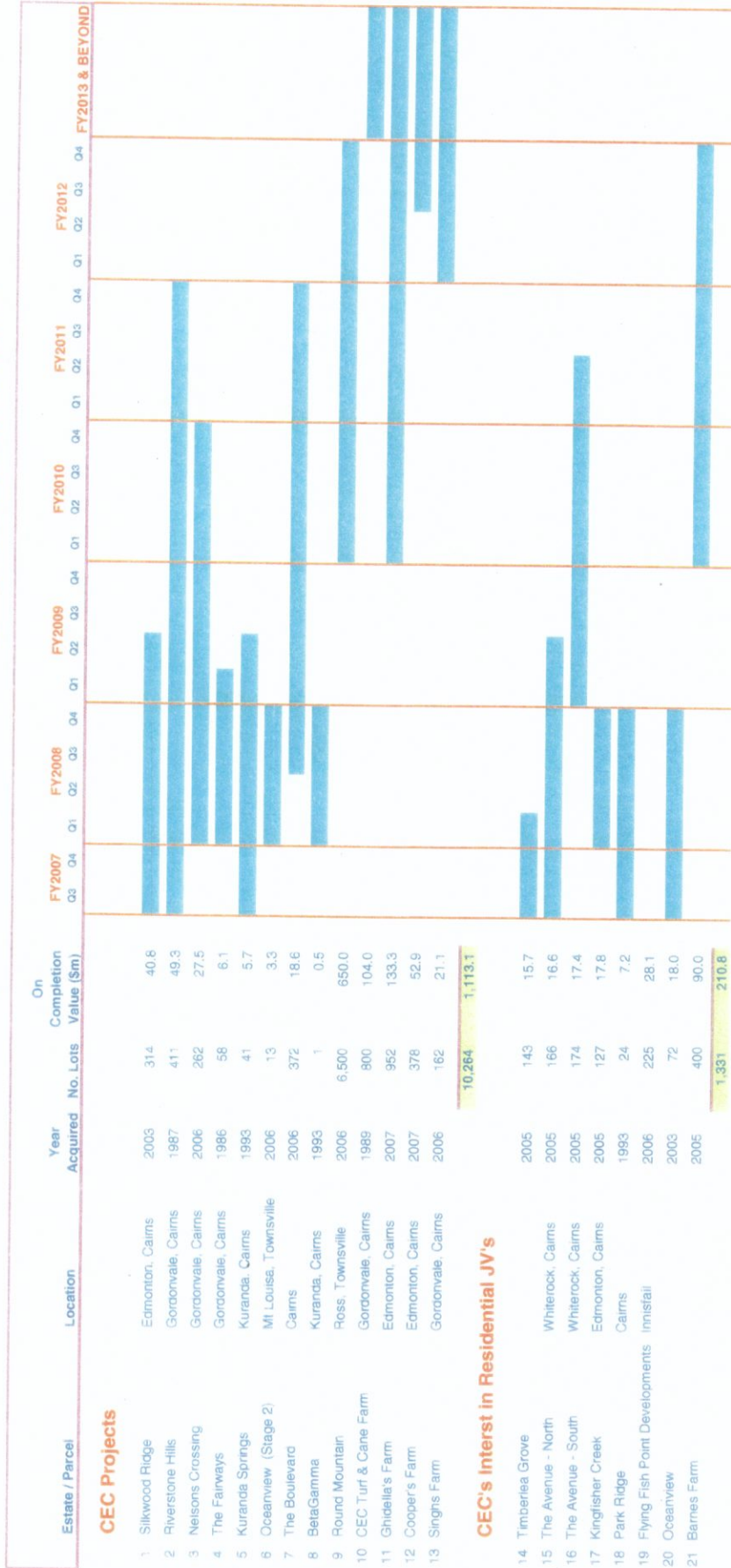
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# CEC Residential & JV Project Pipeline

CEC has an interest in 13,000 residential lots in Northern Queensland, with an estimated on-completion value of >\$1.25 billion. Reliance on JV's is diminishing, the centre of growth will increasingly be based on Townsville.



# CEC GROUP

Building the future of Queensland



# ANNEXURE 3

**Commonwealth Bank**



Commonwealth Bank of Australia  
ABN 48 123 123 124

Level 9, 240 Queen Street  
Brisbane Qld 4000

GPO BOX 1423  
Brisbane Qld 4001

Telephone 07 3237 3465  
Facsimile 07 3237 3567  
Internet: www.commbank.com.au

The Directors  
CEC Group Ltd  
PO BOX 1518  
CAIRNS QLD 4870

12 February 2008

Dear [REDACTED]

## Letter of Approval

We are pleased to inform you that the Bank has approved a variation to your facility as detailed below and in the Terms Schedule. Our approval is provided for the reason and on the terms outlined in the enclosed Acceptance Document and Terms Schedule.

Total facility summary

Facilities New or Varied

	Previously Approved	Now Approved
<b>Working Capital</b>		
Facilities included in Multi-Option Facility		
- Overdraft/s		
- Contingent Liability – Bank Guarantee		
- BetterBusiness Bill Facility Variable Rate		
- Business Card Facility		
Multi-Option Facility	\$33,020,000.00	\$40,020,000.00
<b>Total New or Varied Facilities</b>	<b>\$33,020,000.00</b>	<b>\$40,020,000.00</b>
<b>Property Facility</b>	<b>Previously Approved</b>	<b>Now Approved</b>
Facilities included in Multi-Option Facility		
- BetterBusiness Bill Facility Variable Rate		
- Contingent Liability – Bank Guarantee		
Multi-Option Facility	\$80,480,000.00	\$80,480,000.00
<b>Total New or Varied Facilities</b>	<b>\$80,480,000.00</b>	<b>\$80,480,000.00</b>
<b>Corporate Facility</b>	<b>Previously Approved</b>	<b>Now Approved</b>
BetterBusiness Bill Facility	\$33,000,000.00	\$33,000,000.00
<b>Total New or Varied Facilities</b>	<b>\$33,000,000.00</b>	<b>\$33,000,000.00</b>
<b>Spec Homes</b>	<b>Previously Approved</b>	<b>Now Approved</b>
BetterBusiness Loan	\$8,000,000.00	\$8,000,000.00
<b>Total New or Varied Facilities</b>	<b>\$8,000,000.00</b>	<b>\$8,000,000.00</b>

Your facilities will now total **\$161,500,000.00**



MINUTES OF MEETING OF DIRECTORS

OF CEC GROUP LIMITED (ACN 84 010 025 831)

HELD ON FRIDAY 8 FEBRUARY 2008 AT 3.40 PM

AT CEC GROUP OFFICE 401 SPENCE STREET, CAIRNS.

1. FORMAL BUSINESS

Present	Roy Lavis (RL)	CEO
Participating via Telephone:	Rob Borbidge (RB)	Chairman (Attending from the Gold Coast)
	Greg Kern (GK)	Director (Attending from KCG Cairns)
	Anthony Hartnell (AH)	Director (Attending from AH Sydney)
	Warren Entsch (WE)	Director (Attending from Cairns)
	Steven Lavis (SL)	Director (Attending from PNQ Cairns)
In Attendance:	Gillian Shaw (GS)	Acting CFO
	Kevin Lubbe (KL)	Company Secretary

Apologies: Nil.

2. INTEREST RATE HEDGING

GK gave the board a brief update on the equity raising and the syndication and then proceed with interest rate hedging. The board noted the Interest Rate Risk Management report from the CBA which was previously distributed. Various discussions were then held in respect of interest rate hedging and the two strategies as presented in the report, and at its conclusion the board passed the following resolution:

"The board resolved to accept the strategy in respect of interest rate hedging put forward by the Commonwealth Bank (CBA), but not enter into it until we receive a confirmed letter of offer from the CBA in respect of the syndication, with the debt profile offered".

3. CLOSE

There being no further business, the meeting closed at 3.55pm.

Confirmed as a correct record

CHAIRMAN \_\_\_\_\_  
DATE \_\_\_\_\_