

7 July 2015

Ms. Toni Matulick  
(Secretary)  
Parliamentary Joint Committee on Corporations  
and Financial Services  
E: corporations.joint@aph.gov.au

Dear Ms. Matulick

### **Inquiry into impairment of customer loans**

I state my submission as follows:-

The CEC Group was founded in 1977, then known as Cairns Earthmoving Contractors Pty Ltd, by myself and one partner. The company became the CEC Group in approximately the year 2000 after which I bought my partner out in 2002. The company listed on the Australian Stock Exchange in June 2004 and then was known as CEC Group Limited.

I became the CEO of the new public company and was one of five board members chaired by the \_\_\_\_\_ who, at that time was an ex treasurer of the Queensland Government. As time went on changes to the Board were a number of well known Australian identities with a wealth of business acumen.

The CEC Group traded profitably for 30 years with the audited accounts from 2004 showing –

Year	Income	EBIT	Tax
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 had a number of joint ventures with local and international public companies. These included the then Pioneer Concrete, now Hanson; SITA – one of the World's largest waste management companies; as well as a number of property developers both large and small.

These joint ventures collectively added yearly turnovers to the CEC Group well in excess of \$100.0m and were very profitable to the point that they alone had the capacity to cover the total of the CEC Group's Commonwealth Bank interest commitments from CEC Group's share of the profits.

In 2004 all of the CEC Group's entities were moved from the NAB Bank to the Commonwealth Bank with the master agreement debt of approximately \$61.0m to be renewed in February 2008.

Early in 2007 I had discussions with \_\_\_\_\_ who was the designated Commonwealth Bank's manager in Brisbane to deal with the CEC Group's account.

These discussions involved a \$10.0m addition to our existing borrowing of approximately \$61.0m for the construction of a number of spec homes in the region of our operations. The Bank came back to CEC Group offering a total facility of over \$160.0m on a come and go arrangement to cater for the property development segment of the CEC operation.

Come and go funds are required to develop property up front, then title had to be issued, after which sales and settlements are effected at the same time facility loans are paid down and then the cycle starts again. Some of these property development cycles could take two to three years. Funds were made available immediately and we were told that the master facility agreement would follow for signing.

Towards the end of 2007 I was invited to attend a dinner in Brisbane hosted by the Board of the Commonwealth Bank for its top 500 emerging businesses. At this dinner I talked at length with \_\_\_\_\_ (Chairman of the Board) whom I'd had contact and dealings with when he was Chairman of the Pioneer Concrete board in 1995 when the Pioneer North Queensland joint venture with CEC was established. It wasn't long after the function in Brisbane that Com-Sec approached me to do an investment road show for their clients.

Towards the end of 2007 I started pushing CBA for the master facility documents for CEC Group to sign as the facility had to be renewed by the end of February 2008. The CBA had forwarded funds on the come and go arrangement up to the agreed approximate amount of \$160.0m limit. In early February I received a call from one of the CBA officers to say that the documents were now ready for signature but the Bank suggested that CEC Group consider taking an interest rate hedge of \$100.0m.

At the CEC Board meeting in February the Board were not keen to take an interest rate hedge. Towards the end of February 2008 CEC management were summoned to CBA offices in Brisbane where we were told that we had to reduce our CBA debt. At this time no agreement documents had been signed either for the master facility or the proposed interest rate hedge.

During subsequent discussions with CBA CEC Group was told to bring its borrowings down from approximately \$160.0m to \$120.0m by the end of May 2008, then down to \$80.0m by the end of October 2008 at which time CBA would resume normal banking arrangements and offer a two year facility at \$80.0m.

The asset strength of the CEC Group was shown by the fact that over \$80.0m was paid back to the CBA in that eight month period without affecting the core business activities of the CEC Group. All sales were capital items such as depots in Cairns and Townsville and englobo parcels of land where development approvals had not been gained by this time.

The CEC property development report for February 2008 which was delivered to the February Board meeting showed the following results not yet accounted for at that time:-

LOTS	LIST PRICE	CONTRACT PRICE
	<u>Under Contract with deposits taken</u>	

179		\$31.0m
	<u>Titled lots for sale</u>	
128	\$18.0m	
	<u>Unsold homes complete &amp; awaiting completion</u>	
84	\$30.0m	
	<u>Lots unsold &amp; completed, awaiting title &amp; awaiting completion</u>	
521	\$73.0m	

The report also showed that the take-up rate in Cairns was approximately 1900 allotments per year in which case this also showed huge financial strength in the CEC Property portfolio to the tune of \$152.0m in property stock in trade.

Once we had reached debt reduction down to \$80.0m CBA would not approve the banking facility for CEC Group until the back-dated hedge document was signed by CEC, so that the CBA could legitimise the hedging transactions it had already carried out.

For the whole time during the debt reduction process that was forced upon us by CBA they gave an indication that a 2-year facility would be signed off once we achieved the reduction milestone of \$80.0m.

Although CEC had already achieved a debt reduction of \$80.0m, the back dated hedge document that was issued by CBA to CEC was for a debt value of \$100.0m to reflect the original borrowings by CEC. This was not well received by the Board of CEC due to the fact that not only did the Board not want a hedge but the hedge was unsuitable for the current debt level and the promised 2-year facility at \$80.0m.

Management continued to advise the Board on numerous occasions that CBA through [redacted] was consistently stating that the 2-year facility would be approved once the debt milestone was achieved being \$80.0m.

As Directors and Officers of the company, we were always given comfort that CBA would be approving a 2-year facility once the debt reached below \$80.0m. This comfort was further enhanced after CEC Management (Roy Lavis, [redacted]) went to CBA in Melbourne in November 2008 to meet up with [redacted] and provide a presentation about how the company would be able to effectively service the \$80.0m debt facility. Management returned from the presentation stating that CBA [redacted] was pleased with the position of CEC and how the facility would be managed, and left management with the clear understanding that a 2-year facility at \$80.0m would be approved with no further debt reduction required, and that the facility would be transferred back to CBA's Brisbane office to manage.

Early in 2009 at the time the auditors were auditing the half-year accounts the hedge had come to notice as the auditors were debating the treatment of the hedge. The company's position was that a hedge was not validly in place. Legal advice was sought. During this process management advised that they had received a draft 2-year facility from CBA that included a new clause not previously seen, that the company must have an acceptable Interest Rate Strategy. Management provided CBA with a standard Interest Rate Strategy, which CBA rejected and at that point

advised that CEC had to sign the hedge. The documents provided by CBA Bank were back-dated. This was the only Interest Rate Strategy that CBA would be accepting.

Through this time [redacted] conveyed that he had received a flurry of aggressive phone calls from [redacted] at CBA, insisting the directors sign the hedge agreement as it was presented. [redacted] continually replied to [redacted] that the Board was not approving the signing of the hedge due to its nature and irrelevance to the current business debt, which was now at \$80.0m, not the \$100.0m as the hedge implied, and the proposed facility agreement had further reductions in the debt making it less relevant. In addition it was pointed out that a hedge was a risk reduction device to guard against rising interest rates, and given the GFC that had commenced 15 months before it was inconceivable that putting a hedge in place 9 months ago was good for CEC, and could only constitute a further CBA “money-grab”.

Directly after [redacted] had conveyed his view of the situation to CBA (being that their actions were nothing short of extortion, blackmail and fraud), [redacted] rang through again to speak directly with [redacted]. Both [redacted] and [redacted] went into another office to take the call to which [redacted] was physically screaming down the phone that CEC was to sign the hedge. [redacted] continued to reply to [redacted] that the Board did not want to sign the hedge as it was detrimental to CEC and that the facility conditions that were agreed in November 2008 have changed. Further to this different facility, there was still no guarantee the facility would be approved even if the back-dated hedge was signed.

[redacted] told the Board that [redacted] had stated during the call “sign the hedge quickly, or else the whole deal will go”. The hedge had been imbedded in the new draft facility document. It was at this point that as a Board, we all agreed that signing the back-dated hedge was our only option to keep the company alive with an active facility, but this was only to be signed, under duress, on the basis that this was the “final line in the sand” from CBA regarding any further debt reduction and that the \$80.0m facility would be approved by CBA as per their continued advice to us.

CBA insisted on the further debt reduction and the back-dated hedge and CEC, at risk of having the facility immediately called in, were forced to agree. These milestones could only be achieved by the company selling core income producing assets, which then resulted in reduced cash flow and working capital, ultimately along with the accumulated cost of the hedge (around \$10.0m) resulting in the demise of CEC Group as a company.

Interestingly if the \$10.0m accumulated cost of the hedge had been re-directed to CBA debt reduction there would have been sufficient reduction in line with the amended facility agreement and CEC Group would not have failed.

At the start of this CBA action the CEC Group with all of its entities had over 700 direct employees. It was the first truly local company in the Cairns region to become a public company and was supported by a large number of Mum & Dad shareholders in the area.

Legal advice was taken in February 2009 and an extract from that advice reads:-  
“In our view the CBA’s conduct in sending the confirming letters to CEC Group which refer to and purport to be subject to an ISDA Master Agreement in circumstances where the alleged agreement never in fact existed may also amount to misleading and deceptive conduct pursuant to Section 52 of Australia’s Trade Practices Act 1974.”

Legal advice was also taken from a different legal firm after the collapse of the CEC Group and an extract from that advice reads:-  
“There are issues as to whether the CBA was entitled to demand that you back-date the document to regularise the hedge facility and whether Section 415 of the Queensland Criminal Code 1899 was contravened by the CBA imposing that requirement as an “or else” alternative to the appointment of a receiver.

The repeated shifting of the goal post was inconsistent with the Bank’s having discharged the “good faith” term implied into the loan contract. CBA entered into a commercial funding arrangement with you in circumstances where you were prevented by CBA from deriving the benefit of applying the funds for the express purpose for which the funds were borrowed as known to the Bank.”

CEC Group was trading within its covenants, had not defaulted in its 30 year history and the six-monthly reporting to the CBA was not due so the Bank triggered a default by engineering a default. The CBA then sent in \_\_\_\_\_ to report on the Company on two occasions, took between one and two million dollars in fees and to this date we have not seen a report from either visit from \_\_\_\_\_ .

In Australian law a person robs a bank, they get hunted down, caught by police and processed through the court system and then jailed. When the bank robs a client they send their own team to report, the bank does the sentencing and the directors/officers of the company are held accountable.

For thirty years CEC Group withstood the highs and lows of business activity and then all of a sudden with the Global Financial Crises that the banks created good strong companies like the CEC Group paid the ultimate price financially.

Yours truly

ROY LAVIS  
CEO and Director of CEC Group Ltd.