



# Building Services Authority ***MEDIA RELEASE***

19 May 2009

## **BSA Comment re: CMC Cairns Pty Ltd**

Building Services Authority (BSA) General Manager Ian Jennings today clarified incorrect and misleading information being circulated by CMC Cairns Pty Ltd.

Mr Jennings said subcontractors, suppliers and industry associations have reported that representatives of CMC Cairns Pty Ltd have told them that BSA has agreed to allow the company to continue to trade under administration to allow a Deed of Company Arrangement to be put in place.

“They have also been told that after that CMC Cairns Pty Ltd will come out of administration and trade normally,” Mr Jennings said. “BSA refutes such comments as misleading and incorrect.

“BSA received the draft turnaround proposal from CMC Cairns Pty Ltd late on Friday the 15<sup>th</sup> of May. On Monday this week BSA had a lengthy meeting with those responsible for the preparation of the report.

“BSA raised various issues with the proposal and noted that the proposal appeared to benefit the directors of CMC Cairns Pty Ltd more than creditors.”

Mr Jennings said the plan proposes that the debts of all those owed money by CMC Cairns Pty Ltd be moved to a creditors trust.

He said BSA is concerned that this is an attempt by the directors to prevent creditors from having recourse against CMC Cairns Pty Ltd should the turnaround plan not work.

Mr Jennings said the plan proposes to satisfy those debts with the following assets:

- Shares in a private company that owns real property;
- Revenue from the wind up of related company Benchmark Developments;
- Future trading profits of CMC Cairns Pty Ltd;
- The proceeds of litigation against town planners pertaining to the Edge Project; and
- The proceeds of litigation against David Morgan, the director of Benchmark Developments who is alleged to have committed fraud.

He said BSA has raised numerous issues about the plan with the turnaround experts including:

- The real property owned by the private company and therefore the value of any shares was based on informal market valuations and therefore may be overvalued;

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- CMC Cairns Pty Ltd claims that Benchmark Developments is unable to pay it the money allegedly owing, and may not produce any revenue if wound up;
- The turnaround report indicates that CMC Cairns Pty Ltd will make a loss of \$948,000 from continued trading, raising doubts as to the worth of future trading profits;
- All litigation is inherently uncertain and outside of the control of creditors.

“The plan isolates all the creditors the company owes money to, and then attempts to pay them with assets of dubious or no real value,” Mr Jennings said.

“Another stumbling block to the turnaround plan being successful includes the directors having to show cause that they are fit and proper persons to run the company after BSA’s investigations revealed they provided inaccurate financial information.

“To remain in control of the company the directors must also satisfy BSA that they took all reasonable steps to avoid the circumstances that resulted in any appointment of external administrators.

“To date the directors seem to be laying the blame at alleged fraud by a co-director of related company Benchmark Developments.

“The directors have so far failed to explain exactly how the fraud occurred, why it was not discovered earlier, and why reasonable fraud prevention measures were not in place or were unable to detect it.”

Mr Jennings said BSA is concerned the directors’ mismanagement of the company may also be to blame.

“I am appalled that a company of this size does not appear to have been managing its financial responsibilities by producing meaningful monthly financial accounts including cashflow statements,” he said.

“It is also disappointing that the directors did not come to BSA eight weeks ago when they claim they first became aware of the problem. Had they done so BSA might have been able to get the company expert advice in the early stages and prevented a shut down of jobs.”

Mr Jennings said the BSA is prepared to consider any request by an administrator to continue trading.

“BSA would like to see CMC Cairns Pty Ltd survive as this would be the best possible outcome for all concerned, including sub-contractors and suppliers, but it is vital to ensure that any recovery plan at this stage is in the best interest of subcontractors, suppliers and any other creditors,” he said.

“If the plan is not viable, BSA will not support it, as BSA does not want to see sub-contractors and suppliers suffer greater losses.”

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