

INDUSTRY INSIGHTS

By Costa Nicodemou and Brett Lennane

The perils of contagion risk: Can the failure of a Large Builder Developer Property Group be isolated?



This is the final article in a three-part series of articles on Large Builder Developer Property Group (LBDPG) risks.

Part 2: Risk Mitigation Strategies

Risk mitigation strategies are not an exact science. Strategies should be designed and implemented on a case-by-case basis. The lists below are by no means exhaustive. Rather, they are high-level guides to assist in identifying and managing various risks.

What you do to minimise pre-finance approval risk?

Subject to individual circumstances, such as the level of gearing and access to capital, LBDPGs concentrate risk in the following areas:

- ▲ Understand what the industry thinks of the LBDPG. Seek out opinions from valuers, agents, quantity surveyors, developers, builders and other lenders;
- ▲ Understand the management and shareholder structure and experience of the LBDPG. Do they group their developments under a common shareholding or is there fragmented ownership

of each project (with different parties such as joint venture partners, employees and family);

- ▲ What is the LBDPGs defect dispute record and do they have any current disputes? Use public directories (such as NSW Fair Trading, consumer advocacy sites, publicly accessible Court lists) in your search or seek confirmation / certification from the LBDPG's solicitors and accountants; and
- ▲ Be mindful of contract rebates on presold stock and the implications on the balance of stock held and the equity of the LBDPG.

What can you do to minimise risk post-finance approval?

- ▲ Review all the above recommendations annually or when concerns arise;
- ▲ Make regular site visits (attend PCG meetings). Distressed developments and builders can usually be identified by an experienced eye;
- ▲ Obtain updated forecasts and confirm subcontractor ageings; and
- ▲ Check QS reports for signs of variations and delays. Review adequacy of contingencies.

What can you do to minimise fallout once you know there is distress?

- ▲ **Information Gathering:** Once you realise there are problems, information gathering is the first step. Increase the scope of consultants' roles, such as quantity surveyors and valuers. Ask them to consider all options and gather the most current information and documentation on the development, including:
 - ▲ Pre-sales information: including purchaser details, solicitor's documentation, copies of contracts, deposit locations, residency status, and ability to settle;
 - ▲ Key staff: Consider what information they hold? What's their importance to development completion? Some staff will be critical if a LBDPG fails. They'll often consider leaving before a total failure occurs to protect their own reputations;
 - ▲ All approvals and documentation: Collating this information is crucial to minimise the loss and time required to complete a project. Once a failure occurs, getting these details can take longer, especially as information continues to change as the project progresses. It's important to ensure the 'data room' of information is continually updated;
 - ▲ Sub-contracts, supplier agreements, last payment claims: Understand the nature and timing of outstanding amounts. Work out how much is owing to subcontractors and suppliers from your development(s) as well as from other projects. This is important as other failures could indirectly impact your development should the LBDPG collapse or become unable to complete works due to non-payment on another development.
 - ▲ Expect union activity if subcontractors are unpaid: It may be impossible to re-start a development without the cooperation of the union, which may require payment of subcontractor debts in full.
- ▲ **Identify the critical subcontractors and suppliers:** This varies depending on the stage, complexity and size of a development and may be different for each development. Strategies need to be implemented for each of these subcontractors as they have the potential to delay the completion of construction.

- ▲ **Identify the other financiers and major creditors to the group:** Consider making a collective plan to minimise risk and the impact of distress, and mitigate the fallout of a failure. Bear in mind that lenders themselves pose some financial risk. The institutional and private money flowing into this market may exit at the first sign of industry losses.
- ▲ **Direct payments:** Insist on paying subcontractors and suppliers directly to minimise the risk of funding redirection.

What can you do to protect your position following collapse?

- ▲ Ensure all the above risk mitigation strategies have been implemented;
- ▲ Assuming there is no option for the defunct entity to complete works, identify a replacement builder; and
- ▲ Work with other financiers to pay key subcontractors across the various projects. The key variable that impacts on loss with distressed developments is time lost! Costs over time invariably rise, with significant increases occurring in periods of high activity.

Our broad experience and industry resources equips us to assist in the most complex situations. Please contact [Costa Nicodemou](#) or [Brett Lennane](#) to find out how we can support you.

About BRI Ferrier

BRI Ferrier is a unique affiliation of expert business recovery, insolvency, forensic accounting and advisory firms. We provide practical, innovative services that help financially distressed businesses to recover or at least minimise the negative impacts of insolvency.

With over 160 staff and eleven practices in Australia, New Zealand, Hong Kong and the United Kingdom, we work with clients of all types – from individuals, sole traders and small businesses to public corporations and government entities.

We also work with financiers, solicitors, accountants and creditors to address the needs of all stakeholders when businesses face financial challenges.

BRI Ferrier's team has the expertise and resources to meet any client challenge. By combining our skills and enthusiasm, we achieve the best possible outcomes in all cases where a business experiences financial distress.

How BRI Ferrier can help

BRI Ferrier can assess your current situation and advise on a path forward to minimise further risk.

Early intervention is often the key for a successful restructure of your business. If you or your client is experiencing financial challenges then don't delay, contact us today.

Authors

[Costa Nicodemou](#)

Principal
BRI Ferrier, Sydney

E: cnicodemou@brifnsw.com.au



[Brett Lennane](#)

Consultant
BRI Ferrier, Sydney

E: blennane@brifnsw.com.au



Important notice. The information contained in this Industry Insight is by way of general comment only and is not intended as a substitute for specific advice that addresses your particular circumstances. You should seek specific advice before acting. The information contained in this Industry Insight remains the exclusive intellectual property of BRI Ferrier and any reproduction, publication, communication or adaptation of this information, without the prior written consent of BRI Ferrier, will constitute an infringement of The Copyright Act 1968.

For positive solutions to financial difficulties please contact us.
The initial consultation to your client is free, strictly confidential and without obligation.

Sydney
T: 02 8263 2300
info@brifnsw.com.au

Melbourne
T: 03 9622 1800
info@brifvic.com.au

Adelaide
T: 08 8233 9900
info@brifsa.com.au

Perth
T: 08 6316 2600
info@brifwa.com.au

Brisbane
T: 07 3220 0994
info@brifsq.com.au

Cairns
T: 07 4037 7000
info@brifnq.com.au

Townsville
T: 07 4755 3300
info@brifnq.com.au

Mackay
T: 07 4953 7900
info@brifnq.com.au