

# The Australian

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## Building the Education Revolution projects delayed as builder folds

- by: Sid Maher
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- 10 comments



Sub-contractors Jean Paul Aghabi, right, Toriq Isaac and Rafik Aghabi in front of the BER project at St Brigid's Primary School in Sydney's inner-west. Picture: Renee Nowytarger

Source: The Australian

### **FOUR Sydney Catholic schools face months of disruption after the collapse of a builder engaged to perform Building the Education Revolution work.**

The builder has debts of up to \$4 million, leaving 80 sub-contractors in financial difficulties.

The company, Project Kendall Pty Ltd, is expected to be placed into liquidation at a creditors' meeting in Sydney today amid suggestions by the administrator that the company may have been insolvent at the time that lead contractor Bovis Lend Lease awarded it contracts for BER projects at the schools in upmarket Sydney suburbs.

The Construction Forestry Mining and Energy Union is negotiating directly with Bovis to obtain payments for the sub-contractors, who fear a liquidation of Project Kendall may not produce any return to creditors.

The collapse has raised questions about the due diligence of companies working on the BER. One creditor, Jean-Paul Aghabi, who runs ECM Engineering and is owed more than \$1m by Project Kendall, said he had taken comfort in Bovis's pre-qualification process for BER projects, which included a financial assessment.

The furore is the latest to mar the BER, which has been plagued by cost over-runs, delays and complaints over lack of consultation with school communities.

Last night, Project Kendall's principal director, Aaron Kendall, denied trading while insolvent. He disputed some of the claims from creditors, and said he had done everything he could to keep the company afloat.

Bovis Lend Lease and the NSW Catholic Education Commission both defended the due diligence processes in relation to work on BER projects.

Project Kendall was managing BER projects at the Galilee Catholic Primary School at Bondi; McAuley Primary School, Rose Bay; St Fiacre's Primary School, Leichhardt; Holy Cross Primary School, Woollahra; St Joseph's Primary School, Rockdale; St Brigid's Primary School, Marrickville; and St Francis of Assisi Primary School, Paddington.

A spokesman for the NSW Catholic Education Commission said the Rose Bay, Bondi and Leichhardt projects had been completed but those at Woollahra, Paddington, Marrickville and Rockdale were still in progress and could face delays of up to six months.

He said there was no reason to believe there had been any compromise in the tendering process and the principals had been delighted with the completed projects.

A creditors' report prepared by Worrells Solvency and Forensic Accountants and obtained by The Australian says Mr Kendall used four personal credit cards to fund the company's business, with \$330,000 of payments made by the company to the director's credit cards.

The creditors' report said Mr Kendall also made \$10,000 of electronic funds transfers in the two days before the company collapsed, and the administrator will probe \$66,000 worth of ATM and branch-assisted withdrawals made near its Surry Hills office.

Mr Kendall last night denied taking funds inappropriately from the company in the weeks before it entered administration and disputed the debt claims of some of his creditors, saying they were "grossly exaggerated". He told The Australian he had used the credit cards in the normal course of doing business and had injected \$150,000 of his own money into the company, which now owed him over \$600,000.

He also said there was "nothing untoward" in the cash withdrawals before the company failed, as they had been used to pay for materials to keep jobs going. He said he had not traded while insolvent and blamed the company's demise on Bovis's withholding of about \$500,000 in progress payments as a result of contract variations.

He also attacked Worrells Solvency and Forensic Accountants, which had been appointed at the insistence of trade creditors in favour of his voluntary administrator.

The creditors report said it had received 81 proofs of debt totalling \$3.82m with known creditors owed \$2.38m.

Accounts included as part of the report suggested that, as at June 30 last year, the company had negative net assets of \$64,400, while a year later it had positive assets of \$449,606.

Mr Aghabi, whose company worked at four of the Catholic school BER projects, said he was owed more than \$1m by Project Kendall and its collapse risked costing him his business and his family home.

"We thought it was all government funded, government backed," Mr Aghabi said.

"We're in dire straits if we don't get our money. We sell our house and go bankrupt."

He said he had explained the collapse to his creditors "but they said 'Look, come next year, we need to get paid'".

Mr Aghabi said he had made Bovis aware that sub-contractors were not getting paid on several occasions.

"I'm the type of fellow that doesn't yell and scream and throw his hands up in the air, but I am furious," he said.

"I'm furious at Kendall for the way he managed the projects, but also at Bovis.

"You'd think a company like Bovis has a moral obligation - if they are going to recommend a builder to work for a contractor - that they will do their due diligence to make sure that they are actually financially capable to deliver the project and not send people to the lion's den."

A Bovis Lend Lease spokesman said the company was working with the CFMEU "towards a resolution".

"This will include working with the new contracted builders to engage existing sub-contractors where possible," the spokesman said.

The spokesman said that, after the notification that Project Kendall had entered voluntary administration, the company was unable to demonstrate its ability to complete the contracted works and in accordance with the terms of the contract, this had resulted in the termination of the contract and a re-tendering process commenced.

He defended the due diligence on the selection of Project Kendall for the schools projects.

The company had conducted an independent financial assessment of Project Kendall and "a formal, transparent and open tender process as per all BER projects", including an independent quantity surveyor and the Catholic Education Office.

"Project Kendall was initially appointed to a single BER project and having completed this successfully were subsequently appointed to new projects," he said.

"The company successfully delivered three BER projects.

"Bovis Lend Lease maintains rigorous procurement due diligence across all its projects. Our agreements with sub-contractors requires them to follow strict procedures, including declaring all payments and entitlements, to ensure all their contracted suppliers and employees are paid on schedule."

CFMEU NSW state secretary Malcolm Tulloch said the situation with Project Kendall raised questions about the due diligence of BER projects and the accountability for arrangements for sub-contractors.

"There are a stack of workers who are going to have a very bleak Christmas," Mr Tulloch said.

Worrells Solvency and Forensic Accountants senior consultant Mark Franklin said: "Project Kendall was most likely insolvent before the Bovis contracts were even awarded."

Mr Franklin was critical of Bovis over the cancellation of the BER contracts.

"We engaged an expert to review the contracts but on the day the expert was due to meet them at 4pm, I got a phone call at midday . . . saying that they had a meeting with the church and they had decided to terminate the contracts forthwith," he said. "That was extremely disappointing for a number of reasons because they didn't give us the opportunity to present any strategies for finishing these off."

A spokesman for NSW Education Minister Verity Firth said the Catholic Education Commission was responsible for BER projects in Catholic schools.

## Have your say

### Comments on this story

- *g dutton Posted at 2:42 PM December 23, 2010*

Cor, an Oz article on the BER that doesn't lay blame on the feds or The NSW Labour party !

- *John W Posted at 10:24 AM December 23, 2010*

Previously, the Catholic schools have been praised as models of how to contract builders and were contrasted with State education authorities who botched up the process. In any event, the federal Government has been blamed overall because it is its program. One has to ask: In the history of building in Australia, has there ever been a time when there were never any cost over-runs, delays and lack of consultation? So also, were there no fires or deaths of insulation installers prior to the pink batts program?

- *pat of nsw Posted at 9:50 AM December 23, 2010*

This is just another example of the lack of Policing the Laws of Companies and shows how pitiful any of the Government bodies, that are supposed to be controlling the Company Law within Australia. No doubt the owners have siphoned off all the available funds the company had and left everyone else in the lurch. Another Phoenix Company. The ACCC and ASIC and the Dept of Industrial Relations are all a Farce, and I speak first hand, having dealt with these useless Bodies. They all pass the buck and say it is someone else's problem. This is all happening to frequently in Australia, leaving many many business broke because of the corruption of these large companies and their illegal acts. So much for Company Law in this Country, its an absolute disgrace and in absolute dissaray. It is a great example of how the Fish stinks from the head down, and the Government lead the way in this Country. DISGRACEFUL.

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