



EVIDENCE OF MARCUS SPILLER: HOBSONS BAY AM C88 - DCP & AFFORDABLE HOUSING ISSUES



SGS Economics and Planning Pty Ltd 2017

SGS Economics and Planning Pty Ltd

ACN 007 437 729

www.sgsep.com.au

Offices in Canberra, Hobart, Melbourne, Sydney

TABLE OF CONTENTS

SUMMARY	III
1. PRELIMINARY INFORMATION	1
1.1 Credentials	1
1.2 Instructions	1
1.3 Evidence preparation	2
2. DEVELOPMENT CONTRIBUTION PLAN	3
2.1 Overview of issues	3
2.2 Use of 'simple division' calculation method	3
2.3 Lack of certainty in open space contributions	7
2.4 Contributions for off-site infrastructure	7
2.5 Risk mitigation - over-collection of contributions	8
2.6 Risk mitigation - warranted project modifications	8
3. AFFORDABLE HOUSING	9
3.1 Background	9
3.2 Identified issues	9
3.3 Providing affordable housing through value sharing	9
3.4 Operational definition of affordable housing	13
3.5 Five percent affordable housing requirement is too low	13
3.6 Efficient and equitable implementation of affordable housing contributions across the Precinct	17
APPENDIX A: PLANNING PANELS VICTORIA EXPERT WITNESS DECLARATION	20
APPENDIX B: EY REPORT	23
LIST OF FIGURES	
FIGURE 1 INSTRUCTIONS	2
FIGURE 2 NOMINAL TIMING OF DEVELOPMENT – PRECINCT 15	4
FIGURE 3 NOMINAL PROJECT TIMING	5
FIGURE 4 VALUE SHARING AND AFFORDABLE HOUSING PROVISION – AM C270 MELBOURNE	11
FIGURE 5. FRAMES FOR DEVELOPMENT CONTRIBUTIONS	12
LIST OF TABLES	
TABLE 1 DCP LEVIES UNDER DIFFERENT REAL DISCOUNT RATES	6

TABLE 2	PERCENTAGE REQUIREMENT FOR PERMANENT AFFORDABLE RENTAL HOUSING IN AUSTRALIA	14
TABLE 3	PERCENTAGE REQUIREMENT FOR PERMANENT AFFORDABLE RENTAL HOUSING IN VICTORIA	15
TABLE 4	ESTIMATE OF VALUE UPLIFT BASED ON VALUER GENERAL 2016 REPORT	16
TABLE 5	VALUE UPLIFT BASED ON EY ESTIMATES	16

SUMMARY

1. I (Marcus Spiller) have been instructed by Maddocks, on behalf of the City of Hobsons Bay, to provide expert evidence regarding the Development Contribution Plan (DCP) and affordable housing provisions of Amendment C88 to the Hobsons Bay Planning Scheme.
2. My evidence, in summary, is set out below.

DCP

3. The exhibited DCP is compliant with relevant government guidelines for the preparation of such documents. However, there are five areas where it can be improved or strengthened, particularly in terms of managing cash flow risks posed by the uncertain timing of development and infrastructure outlays.
4. The five issues in question relate to:
 - The use of the ‘simple division’ method to calculate development contribution rates
 - Lack of certainty in the application of open space contributions under clause 52.01
 - Minimal provision for contributions for off-site infrastructure
 - Absence of risk mitigation with respect to over-collection of contributions, and
 - Absence of risk mitigation with respect to warranted project modifications and substitutions.
5. My principal recommendation in respect of the DCP is that the development levies be recalculated using a reasonable projection of the timing of demand and infrastructure investment, and a reasonable provision for Council’s interest costs and risk.

Affordable housing provisions of the DCP

6. An affordable housing requirement in Precinct 15, effected as part of the rezoning provisions for this land, is justified within the ‘value sharing’ frame of development contributions.
7. Under this frame the contribution requirement must be reasonable bearing in mind the value of the ‘development rights’ enabled by the rezoning versus the value of ‘development rights’ under the current zoning of the land.
8. The operational definition of affordable housing for the purposes of this evidence report is the same as that applied in Am C270 of the Melbourne Planning Scheme (which also applies the value sharing frame), that is:

“A dwelling unit or units whose title is transferred to a not-for-profit registered housing association or provider”
9. SGS has estimated that the minimum affordable housing stock permanently required in Precinct 15 should be no less than 10 per cent.
10. The Precinct is expected to comprise 3000 new residential dwellings. Based on the 10% target, there is a requirement for 300 permanently affordable dwellings to be provided.

11. Based on provisional valuation rates for the land under its current development rights versus those under its rezoned status, a contribution of 10% affordable housing in Precinct 15 is achievable and reasonable.
12. The cost of providing these 300 dwellings, nominally priced at \$525,000¹ per unit, needs to be borne by all commercially marketed floor area in the Precinct, including all non-residential uses. After netting out the 300 transferred dwellings, this pool of floor area comprises:
- | | | |
|--------------|-------|-------------------------------|
| ▪ Dwellings | 2,700 | 216,000 m ² |
| ▪ Retail | | 5,500 m ² |
| ▪ Commercial | | 33,000 m ² . |
| ▪ Total | | 254,500 m². |
13. Thus, total commercially marketed development of 254,500 m² is required to generate 300 affordable housing units. This translates to **0.118 affordable housing units for each 100 m²** of commercially marketed floor area.

¹ Median price for a 2 bedroom unit in Altona North according to realestate.com.au Nov 2017

1. PRELIMINARY INFORMATION

1.1 Credentials

14. My full name is Marcus Luigi Spiller and I am a Principal and Partner of SGS Economics & Planning Pty Ltd (SGS), based in the firm's Melbourne office at Level 14, 222 Exhibition Street, Melbourne, VIC, 3000.
15. I hold the following academic qualifications:
 - PhD (Global Studies, Social Science and Planning), RMIT University, Melbourne, 2009
 - Master of Commerce (Economics), University of Melbourne, 1986
 - Bachelor of Town and Regional Planning, University of Melbourne, 1978.
16. I have extensive experience in public policy analysis as an urban economist and planner. I specialise in metropolitan strategic planning, housing policy, urban infrastructure funding and the links between urban structure and national economic performance. I have provided advice to all tiers of government and the private sector related to the dynamics of housing, transport, employment, infrastructure and the general economy in cities.
17. I have previously presented expert evidence at Planning Panels Victoria hearings.
18. Additional information regarding my qualifications and experience is included in Attachment A.

1.2 Instructions

19. I have been instructed by Maddocks, on behalf of Hobsons Bay City Council, to provide expert evidence regarding the DCP and affordable housing provisions of Am C88. My specific instructions are reproduced in Figure 1, below.

FIGURE 1 INSTRUCTIONS

undertake a peer review of the *Altona North Development Contributions Plan June 2017* (DCP);

consider whether the DCP adequately reflects the social and other infrastructure demands of the new development's occupants and the existing community as affected by the new development;

consider the calculation methodology of the DCP and its impact on Council as the agency responsible for delivery (further to the commentary you have previously provided to Council in respect of the landowner's 2015 draft Altona North Development Contributions Plan (by Tract consultants)), the conclusions of which commentary are alluded to in the February 2017 Council officer's report at paragraphs 461 – 479);

consider relevant aspects of submissions received from, in particular, the landowners within the Amendment area (for e.g. submissions which question whether the DCP equitably apportions costs and land amongst the various landholdings in the Amendment area); and

consider the method of delivery of affordable housing through the Amendment, in particular given the importance of affordable housing:

- as discussed throughout the documents which form the strategic basis of the Amendment;
- as referenced in the statutory controls (and incorporated documents) forming the Amendment;
- as discussed in Council's 2017 Housing Strategy background report (a copy of which will be provided to you separately); and
- in Plan Melbourne and recent State Government policy and legislative changes.

1.3 Evidence preparation

20. My evidence is primarily based on the exhibited Amendment and accompanying explanatory and background documents, as supplied by Maddocks.
21. It should be noted that during the past 18 months, SGS was retained by Hobsons Bay City Council to provide advice on various aspects of the then developing planning proposals for Precinct 15 including DCP, affordable housing, retail centre and open space issues. In part, my evidence draws upon this work.
22. I prepared this expert evidence statement with some assistance from Armando Mazzei. Mr Mazzei performed some DCP calculations under my direct instruction.
23. The opinions in this expert evidence statement are my own.

2. DEVELOPMENT CONTRIBUTION PLAN

2.1 Overview of issues

24. In my assessment, the exhibited DCP is compliant with relevant government guidelines for the preparation of such documents. However, there are five areas where it can be improved or strengthened, particularly in managing cash flow risks posed by the uncertain timing of development and infrastructure outlays.
25. The five issues relate to:
 - The use of the ‘simple division’ method to calculate development contribution rates
 - Lack of certainty in the application of open space contributions under clause 52.01
 - Minimal provision for contributions for off-site infrastructure
 - Absence of risk mitigation with respect to over-collection of contributions, and
 - Absence of risk mitigation with respect to warranted project modifications and substitutions.

2.2 Use of ‘simple division’ calculation method

26. The Government guidelines for the preparation of DCPs² provides for two options regarding the method used to calculate development contribution rates per dwelling or dwelling equivalent (or other demand unit).
27. The ‘simple division’ method sums infrastructure costs that are attributable to usage generated in the DCP area and divides this by the sum of total ‘demand units’ (for example dwelling equivalents) expected to be accommodated within the DCP area.
28. Under the ‘simple division’ method, no allowance is made for when project costs will be incurred, nor for when revenues under the DCP will be received. In effect, the calculation assumes that all infrastructure outlays and development receipts will occur instantaneously.
29. This is the method that has been applied in Precinct 15.
30. The ‘simple division’ method is suitable where the planning authority can be confident that outlays will be synchronised with infrastructure receipts; that is, the inflow of funds will exactly match expenditure commitments of the Council or infrastructure agency. Put another way, Council would not need to rely on borrowings, or interest on account surpluses - whether these are accrued in a bank account or within internal financial sources - to meet their obligations for that proportion of infrastructure cost attributable to demand in the Precinct.
31. The second method available under the Government guidelines requires, firstly, that the planning authority make an assessment of the timing of development, that is, the flow of demand units over time and therefore the profile of DCP receipts. The authority then identifies the likely timing of infrastructure projects to meet this development pattern. The time-bounded flow of project costs and the anticipated flow of demand units are expressed in present value terms using a suitable ‘discount’

² https://www.planning.vic.gov.au/_data/assets/pdf_file/0018/29700/Preparing_a_Full_Cost_Apportionment_DCP.pdf

(or interest) rate. The present value cost of the projects is divided by the present value of the demand units to arrive at a charge per demand unit.

32. As alluded to above, if the flow of project costs and the flow of demand units (DCP receipts) are exactly synchronised, the 'simple division' method will give the same charge per demand unit as that generated using the 'present value discounting' method.
33. However, if these flows are not exactly synchronised, the charges will vary. For example, if Council is obliged to outlay funds for the construction of projects, then wait for some years to collect DCP levies as the area develops, the 'present value discounting' method will generate a higher charge per demand unit than the 'simple division' method. This is because the 'present value discounting' method effectively compensates Council for its borrowing costs, or the opportunity cost on its capital, in having to provide infrastructure ahead of DCP receipts.
34. If, on the other hand, Council can defer provision of infrastructure until a relatively late stage in the development of the Precinct, the 'present value discounting' method will give a lower charge per demand unit than the 'simple division' method. This is because the 'present value discounting' method allows for the fact that Council will be able to accrue effective interest on nominally unexpended DCP receipts in the lead up to the actual construction of the relevant infrastructure projects.
35. To illustrate the scope for sub-optimal charging under the 'simple division' method, I asked my office to re-calculate the DCP levies using a particular scenario for the timing of development and infrastructure outlays.
36. There is no information in the Am C88 documentation and supporting strategic material regarding the pace at which the development of housing, retail and commercial activity will occur in Precinct 15. However, the DCP has a nominated 20-year time frame 2017 – 2037.
37. For illustrative purposes, I asked my office to formulate a scenario for the incremental development the Precinct over 20 years, as shown in the following table and charts.

FIGURE 2 NOMINAL TIMING OF DEVELOPMENT – PRECINCT 15

Year	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Yearly increment																					
Dwellings	0	24	41	66	98	139	184	229	267	294	303	294	267	229	184	139	98	66	41	24	13
Retail m ²	0	0	0	318	423	527	616	676	698	676	616	527	423	0	0	0	0	0	0	0	0
Commercial m ²	0	0	0	0	0	1,932	2,311	3,183	3,721	4,087	4,217	4,087	3,721	3,183	2,558	0	0	0	0	0	0
Cumulative increment																					
Dwellings	0	24	65	131	229	368	552	781	1,048	1,342	1,645	1,939	2,206	2,435	2,619	2,758	2,856	2,922	2,963	2,987	3,000
Retail m ²	0	0	0	318	741	1,268	1,884	2,560	3,258	3,934	4,550	5,077	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500
Commercial m ²	0	0	0	0	0	1,932	4,243	7,426	11,147	15,234	19,451	23,538	27,259	30,442	33,000	33,000	33,000	33,000	33,000	33,000	33,000



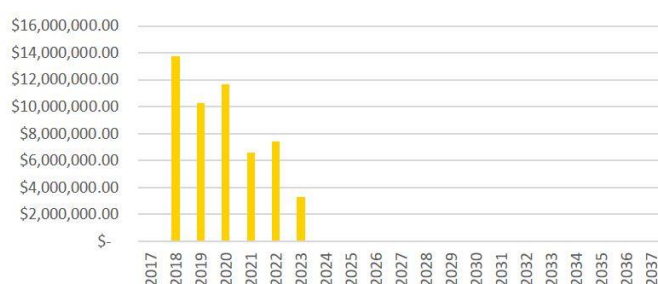
Source: SGS Economics & Planning Pty Ltd

38. This is a notional scenario only. I recommend that the planning authority establish an authoritative reference scenario for the development of the Precinct, which can be used in the scheduling of infrastructure provision and the calculation of development contributions.
39. Under the notional scenario set out above, Precinct 15 would be more than 50% developed within 10 years.
40. On this basis, SGS further assumed that all the enabling and supporting infrastructure projects nominated in the DCP will need to be in place by 2023, that is, within 6 years.
41. The SGS nominated timing of the projects and the associated cash outflows for Council are shown in Figure 3.
42. Note that cash flows are shown in constant 2017 prices. This is standard practice. DCP calculations using the present value discounting method are made in constant prices with the application of a 'real' or inflation-free discount rate. Inflation is factored back into calculated DCP levies through the annual indexation process which is enabled by the Planning and Environment Act.

FIGURE 3 NOMINAL PROJECT TIMING



Cash outflow



Source: SGS Economics & Planning Pty Ltd

Infrastructure Code	Year	Land acquisition cost	Construction cost	Total Cost
IN-3L	2018	\$ 448,658.00		\$ 448,658.00
IN-4L	2018	\$ 1,656,385.00		\$ 1,656,385.00
IN-5L	2018	\$ 2,044,159.00		\$ 2,044,159.00
IN-6L	2018	\$ 1,026,335.00		\$ 1,026,335.00
RD-3L	2018	\$ 8,553,498.00		\$ 8,553,498.00
2018 Total cash outflow		\$ 13,729,035.00	\$ -	\$ 13,729,035.00
IN-5C	2019		\$ 571,779.00	\$ 571,779.00
IN-6C	2019		\$ 679,735.00	\$ 679,735.00
RD-3C	2019		\$ 1,198,808.00	\$ 1,198,808.00
IN-2L	2019	\$ 720,756.00		\$ 720,756.00
RD-2L	2019	\$ 4,720,208.00		\$ 4,720,208.00
2019 Total cash outflow		\$ 5,440,964.00	\$ 2,450,322.00	\$ 7,891,286.00
RD-2C	2020		\$ 1,377,376.00	\$ 1,377,376.00
RD-3C	2020		\$ 1,198,808.00	\$ 1,198,808.00
IN-2C	2020		\$ 1,722,502.00	\$ 1,722,502.00
IN-1L	2020	\$ 956,894.00		\$ 956,894.00
RD-1L	2020	\$ 7,606,992.00		\$ 7,606,992.00
2020 Total cash outflow		\$ 8,563,886.00	\$ 4,298,686.00	\$ 12,862,572.00
RD-3C	2021		\$ 1,198,808.00	\$ 1,198,808.00
IN-7C	2021		\$ 25,331.00	\$ 25,331.00
SP-1&AM-1	2021		\$ 282,730.00	\$ 282,730.00
IN-4C	2021		\$ 753,279.00	\$ 753,279.00
RD-1C	2021		\$ 1,501,547.00	\$ 1,501,547.00
IN-1C	2021		\$ 1,869,980.00	\$ 1,869,980.00
SR-2	2021		\$ 2,160,144.00	\$ 2,160,144.00
2021 Total cash outflow			\$ 7,791,819.00	\$ 7,791,819.00
IN-3C	2022		\$ 636,378.00	\$ 636,378.00
SR-1	2022		\$ 3,511,189.00	\$ 3,511,189.00
CI-1L	2022	\$ 3,266,114.00		\$ 3,266,114.00
2022 Total Cash outflow		\$ 3,266,114.00	\$ 4,147,567.00	\$ 7,413,681.00
CI-1C	2023		\$ 3,249,087.00	\$ 3,249,087.00
2023 Total cash outflow			\$ 3,249,087.00	\$ 3,249,087.00
2018-2023 Total cash outflow		\$ 30,999,999.00	\$ 21,338,077.00	\$ 52,937,480.00

43. SGS performed the DCP calculations for this scenario of development and project timing using the present value discounting method. Three real discount rates were applied – 0%, 2% and 4%.
44. Applying 0% is effectively the same as deploying the 'simple division' method. It means that there is zero interest penalty or opportunity cost for Council in having to outlay funds on projects ahead of DCP receipts.

45. Assuming that inflation runs indefinitely at 3% per annum, applying a real 2% discount rate is the equivalent of Council borrowing at a 5% nominal interest rate. That is, Council is assumed to pay 5% interest on negative balances in its notional Precinct 15 infrastructure account, and earn 5% interest on positive balances in this notional account.
46. Similarly, a 4% real discount rate would infer a nominal borrowing rate of 7%.
47. As a general principle, a higher real interest rate would be warranted where the investment in question is uncertain and risky. This would hold, for example, if Council could not be confident that Precinct 15 will build out at the pace assumed over 20 years.
48. The table below shows what the DCP levies would be under these three real discount rates for the different categories of land use anticipated in Precinct 15, assuming the trajectory of development and infrastructure provision I set out earlier.

TABLE 1 DCP LEVIES UNDER DIFFERENT REAL DISCOUNT RATES

DCP charge per demand unit	With 0% real discount rate	With 2% real discount rate	With 4% real discount rate
Residential (per dwelling unit)	\$12,663.05	\$14,631.26	\$16,787.61
Commercial (per 100 m ²)	\$275.23	\$322.61	\$375.39
Retail (per 100 m ²)	\$1,066.51	\$1,250.13	\$1,454.63

Source: SGS Economics & Planning Pty Ltd

49. As expected, the 0% real discount rate delivers the same levies as the simple division method – that is, those included in the exhibited DCP.
50. Using the 2% and 4% discount rates generates significantly higher levies – 15% higher per dwelling in the case of 2% real and 33% higher per dwelling for 4% real.
51. These differences have serious financial consequences for Council. Under the simple division method, Council will collect either \$8.5 million or \$17.8 million *less* than what it would have collected had the present value discounting method been applied at 2% real and 4% real respectively, based on the development and infrastructure projections set out above.
52. Put another way, Council would, on this scenario, incur between \$8.5 million and \$17.8 million in uncompensated interest and risk costs by using a DCP that makes no provision for the timing of outlays and receipts.
53. Under the exhibited DCP, there are clear financial risks facing Council if it finds itself having to provide infrastructure ahead of substantial development in Precinct 15. It can manage this risk by:
 - Applying ‘present value discounting’ method with a suitable discount rate reflecting the uncertainty of development timing and/or
 - Applying a year on year development release schedule to Precinct 15 linked to the staged delivery of the planned infrastructure projects. In this situation, a proponent wishing to run ahead of the scheduled timing of their development would be required to financially compensate Council for having to bring forward the delivery of the requisite infrastructure projects.
54. Application of both methods is preferred if cash flow risk for Council is to be fully mitigated.

2.3 Lack of certainty in open space contributions

55. Acquisition of land for open space under the exhibited Amendment will not occur under the provisions of the DCP. Rather, in the exhibited amendment, Clause 52.01 in the Planning Scheme will be amended to require a 9.2% contribution of land or the equivalent cash value as subdivision proceeds³.
56. However, some open space enhancement (as distinct from land acquisition) projects will be funded under the DCP.
57. Broadly speaking this is a sound approach. Nevertheless, it carries risks which require mitigation through appropriate provisions in the DCP, in the development plan or other relevant statutory documents.
58. Clause 52.01 sets the rate of open space contribution that may be required under the Subdivision Act. It is an 'inclusionary requirement' or 'required standard of development' rather than a user pays contribution as per the DCP provisions of the Planning and Environment Act (see further discussion below).
59. In my understanding, the Subdivision Act enables the receiving authority to treat the *whole municipality* as a single planning unit for the purpose of open space contributions. That is, in contrast to the DCP provisions of the Planning and Environment Act, cash contributions collected in one part of the municipality can be expended on open space projects in another part.
60. In the case of Precinct 15, there is a risk that cash contributions for open space generated from Precinct 15 could be diverted to open space projects elsewhere in the City.
61. One way of mitigating this risk is to show the specific open space acquisition projects in Precinct 15 as deliverable items in the DCP, even though their cost will not be reflected in the DCP calculations per se.

2.4 Contributions for off-site infrastructure

62. I note that under the DCP, development in Precinct 15 is expected to contribute to only one genuinely off-site project, *IN 7C – Intersection works, Blackshaws and Millers Roads*.
63. A development of some 3,000 dwellings on Precinct 15 may make significant use of a range of infrastructure items situated off-site, including higher order roads, community facilities and, potentially, open space. In principle, Precinct 15 should make contributions towards any such items.
64. The same principle would apply to discounting the cost of projects incorporated in the DCP for usage coming from outside Precinct 15.
65. This issue could be brushed off by invoking the 'swings and roundabouts' notion. This suggests that foregone contributions for off-site infrastructure are compensated by non-discounting of on-site projects for external use. However, this assumed balance should be subjected to close scrutiny given the size of the development and the likelihood, in my view, that the configuration and expanse of Precinct 15 may mean that the vast bulk of the use of its internal projects will, in fact, come from internal development.
66. Meanwhile, the same cannot be said for off-site projects, particularly those higher order transport, community and open space projects that are intended to serve a municipal-wide catchment.

³ I note that Council is looking for a change in this provision to 10%.

2.5 Risk mitigation - over-collection of contributions

67. Council should mitigate the risk that development exceeds the quantum anticipated in the DCP.
68. If significantly more development occurs, Council may be liable to return unexpended funds to the then current owners of land from which the DCP levies were generated.
69. In my view, Council should be able to retain these funds for ongoing development of infrastructure in Precinct 15 and elsewhere as reasonable compensation for taking on the risk of committing to a long-term infrastructure plan in the DCP. After all, as noted in the briefing documents, if development *undershoots* the targets set out in the exhibited DCP, there is *no* compensation for Council's shortfall in receipts even though it may still be committed to delivering the same portfolio of projects.
70. Suitable wording should be included in the DCP signalling that Council will retain unexpended funds for infrastructure purposes in the City.

2.6 Risk mitigation - warranted project modifications

71. There is a reasonable possibility that Council will need to modify the design and specification for various infrastructure projects cited in the DCP to reflect new technologies and changing needs.
72. It is important that Council has the flexibility to make these adjustments without exposing itself to the risk of technical failure to deliver projects as specified in the DCP. Such technical failure could mean that, at the expiry of the DCP, Council will be required to return funds for the projects in question.
73. Suitable wording should be included in the DCP signalling that Council will reserve the right to modify and further develop the planned infrastructure projects to meet contemporary needs.

3. AFFORDABLE HOUSING

3.1 Background

74. The Comprehensive Development Plan (CDP) introduced as part of Am C88 includes a requirement that 5% of housing developed in Precinct 15 should be transferred as 'affordable housing'.
75. I presume that this affordable housing is defined as per Council's adopted Housing Policy (2016), that is "market and non-market affordable housing that is occupied by households in the lower 40 per cent of the income distribution scale including key workers".
76. In agreeing to exhibit the amendment, Council reserved its right to argue for 10% affordable housing on Precinct 15, in line with its Housing Policy (2016).
77. Few submitters commented on the affordable housing issue. A landholder in the Precinct noted that the achievability of an affordable housing requirement needed to be considered in the context of DCP requirements and the overall viability of development.
78. In my opinion, a requirement in Am C88 to provide affordable housing in return for rezoning is justified on the planning principle of 'value sharing'. This principle is embedded in the policy directions set out in Plan Melbourne and the State Government's Homes for Victorians policy package, both of which sanction capture of a portion of value uplift associated with rezonings and development approvals for the provision of affordable housing.

3.2 Identified issues

79. I have identified the following affordable housing issues with the exhibited amendment
 - Affordable housing is not defined clearly enough to support statutory implementation
 - Provision for 5% affordable housing is insufficient, and it falls below Council's target, and
 - A mechanism by which the affordable housing requirement is efficiently and equitably applied across all development in the Precinct is not provided, creating uncertainty and potential for litigation.
80. Before going to these issues, I will elaborate on the planning principle of value sharing as this provides the conceptual scaffold for the opinions and recommendations I express in the following evidence.

3.3 Providing affordable housing through value sharing

81. Any requirements for the provision of affordable housing contributions as part of the planning scheme amendment to enable the redevelopment of Precinct 15 ought not be confused with cash or in-kind transfers made under the Development Contribution Plan (DCP) provisions of the Planning and Environment Act 1987. I discuss these various distinctions in the following paragraphs.

DCP payments

82. DCP payments are justified by the *user pays* principle. This requires proponents to contribute cash or in-kind towards infrastructure benefitting their project, with the contributions linked to the proportion of *usage* of the infrastructure items in question. A *nexus* between the development and an infrastructure item is established when residents, workers or visitors of the development make use of the planned facility, and *fair cost apportionment* is established by aligning share of cost with share of usage. Funds collected must be used for the delivery of the planned infrastructure or they must be returned to the current owners of the land which generated the user pays revenues. This is the *accountability* principle which underpins the DCP provisions.

The 'value sharing' premise of affordable housing provisions

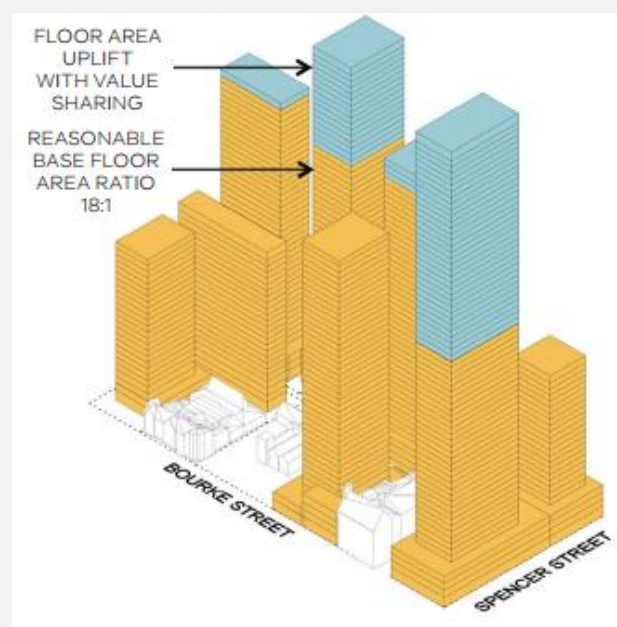
83. 'Development contributions' required on the basis of value sharing are separate from, and additive to, warranted DCP payments. They are subject to different tests of reasonableness.
84. Regulation of land use and development through planning schemes in Victoria represents a form of restriction on market access necessitated by the objective of economic efficiency. The State deliberately and systematically rations access to 'development rights' via planning regulations. Governments and communities sanction this rationing because it is expected to generate a net community benefit (that is, an efficiency or welfare gain) compared to allowing urban development to proceed on a 'laissez faire' basis.
85. The value of regulated development rights is capitalized into the price of the land in question. For example, other things equal, a piece of land which is enabled for use as a major shopping centre will be more valuable than land without this privileged access to retail centre development rights. Similarly, land enabled for a multi-storey apartment building will be worth more than otherwise equivalent land designated for a single household dwelling, and so on. And land zoned for mixed use residential (as would be the case with Precinct 15) will be more valuable than land designated for industrial uses (as is presently the case with Precinct 15).
86. The affordable housing obligation proposed in Am C88 represents due consideration for the granting of access to development opportunities. This obligation is tantamount to a licence fee, albeit delivered in kind.
87. As mentioned, in its housing affordability strategy released earlier this year, and in Plan Melbourne, the State Government sanctioned capture of part of the uplift in value in rezonings for the provision of affordable housing⁴.
88. Moreover, at the Government's direction, a value sharing expectation has been explicitly factored into the Melbourne Planning Scheme with the approval of Am C270 (see Figure 4).

⁴ <http://www.vic.gov.au/affordablehousing.html>

FIGURE 4 VALUE SHARING AND AFFORDABLE HOUSING PROVISION – AM C270 MELBOURNE

An example of value sharing is provided by AmC270 to the Melbourne Planning Scheme. Through this amendment, the Victorian State Government has explicitly sanctioned value sharing linked to the granting of additional development rights to proponents of high rise developments in the Capital City Zone. The amendment provides new built form provisions and specifies a value sharing scheme for the Melbourne Capital City Zone. This provides for the delivery of public benefits (such as affordable housing provision) based on floor area uplift. Clause 22.03 of the Scheme sets out how 'Floor Area Uplift and Delivery of Public Benefit' mechanism is to operate (see schematic below).

Thus, value sharing schemes can be enacted when a higher value is achieved through rezoning (as in the case of Precinct 15) or permission to expand floor area ratios through the granting of additional development potential. An agreed portion of the gains in value resulting from such actions can be used for a range of public benefits such as additional or better quality open space (over and above standard open space contributions), specific strategic uses, public realm improvements or, as is the case for Precinct 15, affordable housing.



Source: DELWP, 2016 http://delwp.vic.gov.au/_data/assets/pdf_file/0017/363113/1611-C270-Summary-Doc.pdf

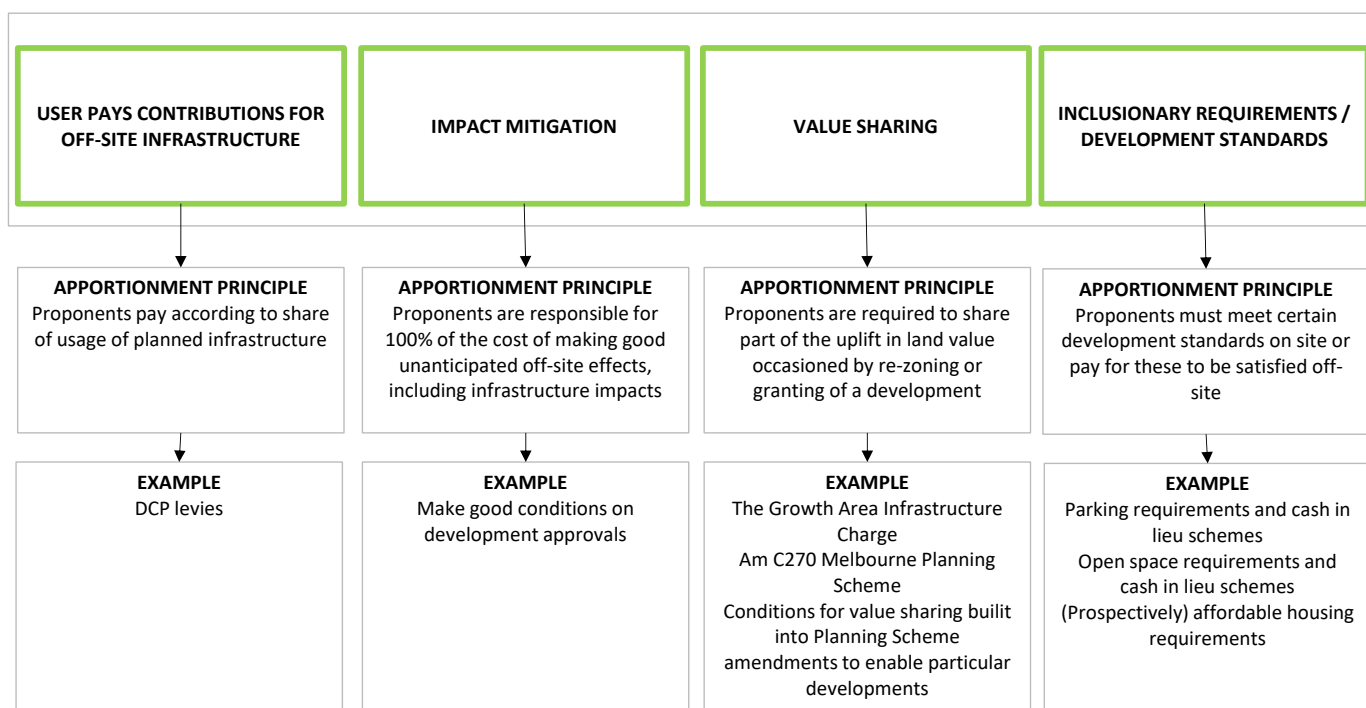
Impact mitigation and inclusionary provisions

89. In my opinion, the value sharing premise for an affordable housing requirement in Precinct 15 as part of a planning scheme amendment is also separate from (and potentially additive to) two further circumstances where a proponent may be legitimately required to provide cash or in-kind contributions as part of a development approval process. These additional circumstances relate to (1) *impact mitigation* and (2) *inclusionary standards*.
90. A proponent may be legitimately required to make compensatory payments or off-setting contributions to mitigate the unanticipated adverse effects of their project on the natural, built or social environment. For example, if a development incorporates significantly more site coverage and would therefore result in stormwater runoff that exceeds the parameters which had been built into an area wide contribution scheme (DCP) for drainage, that particular proponent may reasonably be requested to meet 100 per cent of the cost of, say, an off-site retarding basin or tank to manage the additional flows. This requirement is premised on the 'exacerbator pays' principle where the party responsible for the damage must meet the full cost of making it

good (even though others may subsequently benefit from the off-site retention facility). This is clearly distinct from the ‘user pays’ principle where, as I explained earlier, costs are shared according to projected share of usage.

91. For their part, inclusionary provisions are premised on minimum acceptable standards of development with the proponent having the option to fulfil the required performance standard off-site through a cash or in-kind contribution. Cash-in-lieu schemes have been operated for the fulfilment of car parking requirements for decades and are now formalised in the Victorian Planning Provisions (VPP). Cash payments in lieu of provision of 5 per cent (or more) of land for public open space upon approval of subdivision is another example of the ‘inclusionary standards’ premise for requiring cash or in-kind contributions from a development proponent. Again, this premise is quite different to the other rationales for requiring cash or in-kind contributions (user pays, value sharing and impact mitigation) and could reasonably be applied in addition to all three of these other measures.
92. Inclusionary requirements for affordable housing could potentially be applied in Precinct 15 in tandem with a value sharing scheme⁵. However, the pathway to implementation is less clear with the VPPs currently missing an explicit enabling mechanism for such a requirement.
93. Figure 5 summarises the complete range of situations where development contributions can reasonably be required of proponents. Note, again, that each of the cited frames is additive and mutually exclusive.
94. An affordable housing requirement in Precinct 15, effected as part of the rezoning provisions for this land as discussed here, falls into the ‘value sharing’ frame. Accordingly, it needs to be addressed within the tests of reasonableness which are relevant to that frame only. The key test is that the contribution requirement must be reasonable bearing in mind the value of the development enabled by the rezoning.

FIGURE 5. FRAMES FOR DEVELOPMENT CONTRIBUTIONS



Source: SGS Economics & Planning Pty Ltd

⁵ See <http://www.sgsep.com.au/assets/Occasional-Paper-Revisiting-the-economics-of-Inclusionary-Zoning-April-2015.pdf>

95. I now turn to the three issues cited at paragraph 79.

3.4 Operational definition of affordable housing

96. As noted, Hobsons Bay City Council's Affordable Housing Policy Statement (2016) defines affordable housing as...

"Market and non-market affordable housing that is occupied by households in the lower 40 per cent of the income distribution scale including key workers".

97. It goes on to explain that affordable housing can comprise:

Affordable market housing (private housing)

- *Private home ownership where the purchaser's mortgage costs do not exceed 30 per cent of the gross income of the occupant.*
- *Rental housing that is owned and managed by private individuals or corporations where rent does not exceed 30 per cent of the gross income of the household.*

Non-market housing (social housing)

- *Rental housing that is owned and managed by the Director of Housing.*
- *Rental housing that is owned and managed by a not for profit housing organisation.*

98. As the Precinct 15 affordable housing requirement would operate within the confines of the Planning and Environment Act, I would recommend that the operational definition of affordable housing for the purposes of Am C88 be the same as that applied in Am C270 to the Melbourne Planning Scheme, that is:

"A dwelling unit or units whose title is transferred to a not-for-profit registered housing association or provider"

99. This definition is simple and clear in terms of statutory implementation. The proponent's obligations are unambiguous.

100. Moreover, transfer of dwellings to a registered Housing Association can be reconciled with Council's wider perspective on housing affordability in so far as the Housing Association could potentially deploy some of the assets in question for key worker housing and shared equity ownership schemes, though this would be subject to supervision by the State's sector regulator.

3.5 Five percent affordable housing requirement is too low

101. SGS is regularly asked to advise on appropriate affordable housing targets for particular areas, municipalities and regions. Invariably, our advice is that at least 10% of all housing should be social housing or other non-market housing. This is based on census data on households exhibiting various levels of severity in unmet housing needs, ranging from outright homelessness to moderate income households in rental stress.

102. For each category of household in need, SGS makes an assumption about the percentage of enumerated households that should be factored into an overall affordable housing requirement target. For example, 100% of homeless households sleeping rough or in supported accommodation are assumed, by SGS, to be in need of permanent affordable housing, whereas 85% of low income households in rental stress are factored into the target. This adjustment reflects the possibility that some of these lower income households may be in transitional need, or have other options. Such adjustments make for a conservative overall target; that is, the percentage target is lower than it otherwise might be.

103. Using this method, SGS has estimated that the minimum affordable housing stock permanently required in all regions of Australia should be no less than 10 per cent. This national figure, the calculation of which is explained in Table 1 using 2011 Census data, is the *minimum* total affordable housing required as a proportion of *all* households including those already in social housing. As mentioned, this number is established by determining the overall need as a percentage of all households, and adopting a minimum percentage target (between 85 – 100 per cent) to realistically prioritise dwelling delivery.
104. Given the difficulty for the Australian Bureau of Statistic's national Census in reaching vulnerable cohorts such as those experiencing housing crisis, the identified minimum affordable housing stock requirement (rounded down to 10 per cent) is likely to be a conservative one that does not fully account for the true extent of need.
105. It is noteworthy that the minimum permanent affordable housing stock requirement in Victoria, calculated on this method, is almost the same as the national figure in percentage terms (see Table 3)
106. The question arises as to why a *national* figure should be applied to a municipality such as Hobsons Bay and to a local area such as Precinct 15? Our logic is as follows:
- Planning for affordable housing provision in a large regeneration area like Precinct 15 should take a long-term view – 50 years plus.
 - Over this time frame, the current differentiators of the Hobsons Bay housing market and demography will change many times over; in other words, there is little point in estimating the permanent need for affordable housing on Precinct 15 based on current conditions.
 - Planning for affordable housing in Precinct 15 should allow for the best available estimate of the *average* propensity of a household to be in affordable housing need.
 - The national statistics on housing need provide this measure of average propensity to be in housing need.

TABLE 2 PERCENTAGE REQUIREMENT FOR PERMANENT AFFORDABLE RENTAL HOUSING IN AUSTRALIA

Housing priority group	No. of households	% all households (8,339,035)	% minimum target	Minimum social housing requirement	% minimum requirement
Homeless households - Improvised dwellings, tents or sleeping out (2011)	6,813	0.1%	100%	6,813	0.1%
Homeless households - Supported homeless accommodation, staying with other households, boarding houses, temporary lodging, severely crowded dwellings (2011)	37,855	0.5%	90%	34,070	0.4%
Marginal households - other crowded dwellings, improvised dwellings, caravan parks (2011)	30,132	0.4%	85%	25,612	0.3%
Low income in severe rental stress	171,797	2.1%	85%	146,027	1.8%
Low income in rental stress	329,833	4.0%	85%	280,358	3.4%
Households in existing social housing	422,481	5.1%	90%	380,233	4.6%
Total					10.47%

Source: SGS Economics & Planning (2015), based on Census of Population and Housing 2011; National Housing Supply Council 2009

TABLE 3 PERCENTAGE REQUIREMENT FOR PERMANENT AFFORDABLE RENTAL HOUSING IN VICTORIA

Housing priority group	No. of households	% all households (2,031,227)	% minimum target	Minimum social housing requirement	% minimum requirement
Homeless households - Improvised dwellings, tents or sleeping out (2011)	1,092	0.1%	100%	1,092	0.1%
Homeless households - Supported homeless accommodation, staying with other households, boarding houses, temporary lodging, severely crowded dwellings (2011)	8,532	0.4%	90%	7,679	0.4%
Marginal households - other crowded dwellings, improvised dwellings, caravan parks (2011)	6,534	0.3%	85%	5,554	0.3%
Low income in severe rental stress	62,977	3.1%	85%	53,530	2.6%
Low income in rental stress	86,326	4.2%	85%	73,377	3.6%
Households in existing social housing	80,705	4.0%	90%	72,635	3.6%
Total					10.53%

Source: SGS Economics & Planning (2015), based on Census of Population and Housing 2011; National Housing Supply Council 2009

107. The Precinct is expected to comprise 3,000 new residential dwellings. Based on the 10% target, there is a requirement for 300 permanently affordable dwellings to be provided within the Precinct 15 development land.
108. Based on the value sharing principle, the transfer of up to 300 dwellings (or the equivalent value) by Precinct 15 developers to registered housing providers at zero consideration is warranted.
109. The median market price of a 2 bedroom apartment in Altona North is \$525,000 (November 2017) according to realestate.com.au. The total cost of such an affordable housing obligation is therefore estimated at \$157.5 million.
110. Based on provisional valuation rates for the land under its current development rights versus those under its rezoned status, I conclude that this contribution is achievable and reasonable in Precinct 15.
111. Application of the value sharing principle as part of rezonings or development approvals is widely practiced in NSW via what are known as Voluntary Planning Agreements (VPAs). In my experience, VPAs typically allow for a value capture rate of 50%.
112. The change of use fee applied in the ACT to capture a share of value uplift from rezonings and development approvals is calibrated to 75% of the increase in residual land value.
113. The value capture rate for additional development enabled above the floor area ratio of 18:1 in Am C270 to the Melbourne Planning Scheme is approximately 80%.
114. I have proceeded on the basis that a 50% value sharing rate is appropriate for Precinct 15.
115. By referring to the Valuer General's 'Guide to Property Values in Victoria' (2016)⁶ I have made a broad-brush estimate of the value uplift associated with Am C88 and compared this to the estimated cost of a 300 unit affordable housing requirement. This is shown in Table 4. On this basis, the affordable housing requirement would represent about a quarter of the value uplift.

⁶ Valuer-General Victoria (2016) A Guide to Property Values, Annual data and analysis from the Valuer General Victoria

TABLE 4 ESTIMATE OF VALUE UPLIFT BASED ON VALUER GENERAL 2016 REPORT

A	Net developable area (res/mixed) ha	51.37
B	Net developable area (industrial) ha	60.69
C	Value per sq m res dev site (VG 2016)	\$1,546.72
D	Value per sq m englobo industrial (VG 2016)	\$156.14
E	Value of site current zoning (2016)	\$94,761,366
F	Value of site new zoning (gross) 2016	\$794,550,064
G	Proposed development contributions under amC88	\$53,000,000
H	Net value of site - new zoning (2016)	\$741,550,064
I	Value uplift attributable to new zoning (H-E) 2016	\$646,788,698
J	Value of affordable housing requirement (300 units)	\$157,500,000
K	Value of affordable housing requirement as % of uplift	24%

116. Maddocks instructed EY, on behalf of Hobsons Bay City Council, to make a more targeted assessment of land values in Precinct 15, based on current and proposed zonings.

117. Using the EY estimates (which may be found at Appendix B), I have made a further assessment of the scale of value uplift associated with Am C88, as shown in Table 5. Using these numbers, the affordable housing requirement for 300 dwellings would represent between 40% and 44% of the value uplift.

TABLE 5 VALUE UPLIFT BASED ON EY ESTIMATES

	Lower bound estimate		Higher bound estimate	
	Industrial	New zoning	Industrial	New zoning
Value per square metre	\$300	\$900	\$350	\$1,000
Area (sq m)	600,000	600,000	600,000	600,000
Value	\$180,000,000	\$540,000,000	\$210,000,000	\$600,000,000
Difference	\$360,000,000		\$390,000,000	
Value of affordable housing requirement at 300 units	\$157,500,000		\$157,500,000	
Affordable housing requirement as % of uplift	44%		40%	

118. Bearing in mind that some of the land in Precinct 15 may have traded at rates higher than those warranted by current zoning in anticipation of a zoning change, some commentary on the impact of the affordable housing requirement on the viability of development is in order.

119. I have not made a particular study of land holders in Precinct 15 and their intentions and expectations. Such a study would be difficult in any case. However, in principle, land holders are likely to fall into one three categories:

- 'original' owners of the industrial land, with no development aspirations themselves, but looking to sell their property to a developer in due course
- Investors or land traders who are not intending to develop in their own right but rather to generate an appropriate return by; acquiring property at a pre-rezoning rate; shepherding it through the planning scheme amendment process and then selling to a developer, and
- developers who have purchased the land recognising that it is 'due' to be rezoned and are looking to feed the property in question into their production pipeline.

120. I make the following high-level observations about the impact of the affordable housing requirement on these various parties.

121. The first group could sustain a reduction of up to 50% in the value uplift they might have otherwise expected. Nevertheless, they will continue to enjoy a

substantial uplift and this, I would expect, would continue to motivate them to release their land to a developer if the opportunity arose.

122. Depending on their due diligence, the second group may also suffer a loss of value versus expectation. This, in itself, is not problematic so long as the land traders ultimately release their properties to developers. Rational behaviour would suggest they would absorb losses and move on.
123. In my opinion, it is not the role of planning system to make good or underwrite the speculative dealings of such market agents. As I have noted, the conditions surrounding the ultimate form of Am C88 should be directed at achieving a net community benefit.
124. With respect to the third group – developers – the impact of the affordable housing requirement will depend, again, on their due diligence. If they have made their acquisitions relatively recently, they will have been aware of Council's policy targeting 10% affordable housing and, I would expect, will have made due provision in their development equation.

3.6 Efficient and equitable implementation of affordable housing contributions across the Precinct

125. For the sake of simplicity, I have assumed that share of value uplift across the precinct is broadly commensurate with share of future development capacity in the precinct, measured by share of 'build out' floorspace. Greater precision in this equation could be achieved by weighting floor area by use-specific residual land values (expressed on a per square metre basis). However, this may not make a substantial difference in terms of affordable housing liability by property and would introduce more complexity in the implementation process.
126. Total planned floor area in Precinct 15, as estimated by the VPA for the purposes of the DCP, is shown in Table 3. Assuming an average floor area of 80 m² per residential apartment, total anticipated floor area in the Precinct is as follows:
- | | | |
|--------------|-------|-------------------------|
| ▪ Dwellings | 3,000 | 240,000 m ² |
| ▪ Retail | | 5,500 m ² |
| ▪ Commercial | | 33,000 m ² . |
127. As noted, based on the 10% affordable housing requirement, Precinct 15 should generate 300 affordable housing units for transfer to registered providers.
128. Within the value sharing frame, the cost of providing these 300 dwellings, nominally priced at \$525,000 per unit, needs to be borne by all commercially marketed floor area in the Precinct, including all non-residential uses. After netting out the 300 transferred dwellings, this pool of floor area comprises:
- | | | |
|--------------|-------|-------------------------------|
| ▪ Dwellings | 2,700 | 216,000 m ² |
| ▪ Retail | | 5,500 m ² |
| ▪ Commercial | | 33,000 m ² . |
| ▪ Total | | 254,500 m². |
129. Thus, total commercially marketed development of 254,500 m² is required to generate 300 affordable housing units. This translates to **0.118 affordable housing units for each 100 m²** of commercially marketed floor area of whatever type.
130. This ratio can be applied at the time when individual proponents come forward for the development of their land. Two hypothetical cases follow to illustrate the practical application of this formula.

Case 1

Development proposal	50 commercially marketed dwellings
Total commercially marketed floor area	4,000 m ²
Affordable housing liability (units)	$(4,000 \text{ m}^2 / 100) \times 0.118 = 4.72$ dwellings
Discharge of affordable housing obligation	Option 1 Transfer of 4 units plus 0.72 x \$525,000 in cash (\$378,000) Option 2 Pay 4.72 x \$525,000 in cash (\$2.478 million) Option 3 Any combination of transferred units, land and cash to the value of \$2.478 million

Case 2

Development proposal	100 commercially marketed dwellings plus 3,000 m ² of retail floor area
Total commercially marketed floor area	11,000 m ²
Affordable housing liability (units)	$(11,000 \text{ m}^2 / 100) \times 0.118 = 12.98$ dwellings
Discharge of affordable housing obligation	Option 1 Transfer of 12 units plus 0.98 x \$525,000 in cash (\$514,500) Option 2 Pay 12.98 x \$525,000 in cash (\$6.815 million) Option 3 Any combination of transferred units, land and cash to the value of \$6.815 million

131. I expect that this mechanism for establishing and enforcing the affordable housing liability of development proponents in Precinct 15 could be set out in the CDP. This would prescribe how the amount of affordable housing to be provided by individual developers will be calculated (as explained above).
132. The CDP could also describe how the dwelling units and/or cash and/or land generated by this requirement will be assigned to permanent affordable housing provision in Precinct 15 via the proposed Hobsons Bay Affordable Housing Trust or similar process.
133. Dwellings, land and cash generated via the Precinct 15 affordable housing requirements could be vested in the Housing Trust in the first instance. Note that these assets would be transferred by development proponents to the Trust at zero consideration, that is, they would be transferred for free.
134. These assets could then be deployed via contracted Registered Housing Associations for the permanent delivery of affordable housing within the terms of the Trust's overarching charter.
135. Once in receipt of assets allocated by the Hobsons Bay Housing Trust, relevant Housing Associations would provide all required tenancy support and asset management services. Developers would have no ongoing obligations once they have transferred the required units or made their cash in lieu payments.
136. Under the normal supervision of the State Government Housing Registrar, the funds and dwellings collected through the Scheme would be used as permanent affordable housing, allocated according to transparent, fair and prudent asset management policies.

137. Should the Council not proceed with the Hobsons Bay Housing Trust, implementation of the value sharing affordable housing arrangements in Precinct 15 can proceed by way of one of two means:
1. **Purchase of Trust services from an existing similar facility.** Other Councils, for example, Port Phillip Council, have established Trusts for the holding and deployment of affordable housing funds and assets generated through the planning system. Hobsons Bay City Council could arrange for an existing Trust to perform these services on its behalf for a suitable emolument.
 2. **Directing applicants to pre-approved Housing Associations and Providers.** Community housing providers would be screened and pre-approved by Council for the purpose of delivering affordable housing in Precinct 15. As part of the planning permit process, proponents would be required to show evidence to Council that they have entered into legally binding agreements to transfer the mandated assets or cash to a nominated provider.

APPENDIX A: PLANNING PANELS

VICTORIA EXPERT WITNESS

DECLARATION

a) The name and address of the expert

Marcus Luigi Spiller

SGS Economics & Planning Pty Ltd

Level 14, 222 Exhibition Street

Melbourne

b) The expert's qualifications and experience

PhD (Global Studies, Social Science and Planning), RMIT University, Melbourne, 2009

Master of Commerce (Economics), University of Melbourne, 1986

Bachelor of Town and Regional Planning, University of Melbourne, 1978

Dr Spiller is a founding partner at SGS. He has extensive experience in public policy analysis as an urban economist and planner. Marcus specialises in providing high level advice on metropolitan strategic planning, housing policy, infrastructure funding and the links between urban structure and regional economic performance.

Marcus is a past National President of the Planning Institute of Australia and a former Board member at VicUrban (now called Development Victoria). He has served on the Commonwealth Government's Housing Supply Council and the equivalent body set up by the NSW Government. Marcus has been appointed an Adjunct Professor in the School of Global, Urban and Social Studies at RMIT University and an Adjunct Professor in the Faculty of Built Environment at UNSW. He is also an Associate Professor at the University of Melbourne.

c) The expert's area of expertise to make the report

Marcus is a leading adviser in urban infrastructure policy, including funding mechanisms. He has been involved in the formation of development contributions legislation in most Australian jurisdictions, though he does not necessarily endorse all recent initiatives in this area. He argues for a clear separation of user charges, betterment levies, impact mitigation payments and inclusionary zoning provisions in planning legislation.

Over the past couple of years, he has assisted more than a dozen Councils in Victoria with the preparation of development contributions policies and plans. He prepared and presented expert evidence in respect of Moreland's recently approved municipality wide DCP. Marcus has had several articles on infrastructure funding published in professional journals circulating at the national and state levels.

Marcus is the co-editor of an internationally published book on infrastructure funding and management. (Wellman, K., and Spiller, M. (2012) Urban Infrastructure: Finance and Management, Wiley).

Marcus is also a widely quoted expert on the role of the planning system in generating contributions towards affordable housing. His list of publications includes:

Spiller, M. and Anderson-Oliver, M. (2015) Revisiting the economics of inclusionary zoning, Paper presented to the Australian Housing Researchers Conference, Hobart, February 2015

He has consulted extensively on how affordable housing contributions can be efficiently and equitably effected via development approval processes. Clients have included IMAP, the NSW Government and most recently, Hobsons Bay City Council.

d) Other significant contributors to the report and where necessary outlining their expertise

Mr Armando Mazzei prepared the DCP calculations cited in this evidence statement. He performed these calculations under my supervision.

Mr Mazzei is expert at operating SGS's DCP model.

e) Instructions that define the scope of the report

My instructions in this matter, provided in writing by Maddocks, were to:

- Familiarise myself with the history of the Precinct 15 rezoning proposal
- Review the DCP prepared by the VPA for Precinct 15,
- Consider relevant submissions made in respect of the DCP during the exhibition of Am C88
- Provide my opinion on how this DCP could be improved, if at all, and
- Provide my opinion regarding the preferred method by which affordable housing might be delivered through the Am C88.

f) The identity of the person who carried out any tests or experiments upon which the expert relied in making this report and the qualifications of that person

Mr Armando Mazzei (see above)

g) The facts, matters and all assumptions upon which the report proceeds

All these matters are detailed in my evidence statement.

h) Reference to those documents and other materials the expert has been instructed to consider or take into account in preparing the report, and the literature or other material used in making the report

All these matters are detailed in my evidence statement.

i) Provisional opinions that have not been fully researched for any reason (identifying the reason why such opinions have not been or cannot be fully researched)

These matters are detailed in my evidence statement.

j) Questions falling outside the expert's expertise and also a statement indicating whether the report is incomplete or inaccurate in any respect

These matters are detailed in my evidence statement.

I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

Name Dr Marcus Spiller

Date November 13, 2017

APPENDIX B: EY REPORT

Hobsons Bay City Council
c/o Sarah Day
Associate
Maddocks
727 Collins Street
MELBOURNE VIC 3008

13 November 2017

Provision of Professional Services – Expert Witness Report – Planning Scheme Amendment C88

Dear Sarah,

Maddocks on behalf of Hobsons Bay City Council have requested that Ernst & Young (“EY”) prepare comments and level of values relating to land within the Planning Scheme Amendment C88 for an upcoming Panel Hearing, as per the engagement letter (refer to Appendix A) dated 8 November 2017.

As per our engagement letter, EY have provided an estimate of value only, made on the following basis:

- ▶ The generic value of the developable land (say 60 hectares if sold in say 20 to 30 hectare parcels) covered by Amendment C88, calculated on a residual land value basis assuming the land can only be used for the purposes set out under the current zoning of the land, being englobo industrial development land. Under this scenario we have assumed that the land will be industrial for perpetuity. Therefore a hypothetical purchaser will not factor any speculative value in the chance that the site will be rezoned to an alternate zoning such as mixed use or residential.
- ▶ The generic value of the developable land covered by Amendment C88, calculated on a residual land value basis assuming the higher value mix of uses made possible by the proposed planning controls under the amendment, being principally residential land (same 60 hectares).
- ▶ The value of land is a function of its location, zoning, use and return etc. For industrial or farming land that has rezoning potential to residential the value increases by in the order of 10 to 15% pa. We note that a number of sales have occurred in recent years in the area covered by C88. The rates achieved reflect a speculative component.

Introduction

Background

The area located within the Planning Scheme Amendment C88 applies to the land generally bounded by the West Gate Freeway, New Street, Blackshaws Road and Kyle Road in Altona North and South Kingsville.

The area has traditionally been part of an industrial estate that has been identified by the Hobsons Bay Council as a strategic rezoning opportunity and considers the land suitable for a residential development with integrated mixed use components, including provision for local shops, services, parks and offices. The residential development is intended to be predominantly low rise at the edges of the site, with opportunities for midrise apartments and mixed use buildings in suitable locations within the site and on a short stretch of Blackshaws Road.

Market Commentary

Englobo Industrial Sales Evidence

In undertaking our assessment, we have taken into consideration sales transactions of comparable industrial englobo parcels which have sold throughout Metropolitan Melbourne and greater Victoria. There are no directly comparable sales to the subject area due to the sheer size of the site in an inner to middle city location. We have considered a mix of improved and vacant land sales. A summary of the sales relied upon has been provided in the table below:

Industrial Sales Evidence

Source: EY, 2017

Address	Sale Price (exc. GST)	Sale Date	Land Area (sqm)	Zoning	Reflects \$/sqm of Land Area
241 Salmon Street, Port Melbourne	\$122,330,000	Aug-16	320,600sqm	IN1Z	\$382/sqm
810-848 Kororoit Creek Road, Altona North	\$40,000,000	Jun-16	372,000sqm	SUZ4	\$107/sqm
Lot 1 Thompsons Road, Keilor Park	\$16,500,000	Oct-15	60,562sqm	IN1Z	\$272/sqm
63-83 Fitzgerald Road, Laverton North, VIC	Approximately \$100,000,000	Jun-15	241,678sqm	IND2Z	\$414/sqm
78-118 Cherry Land & 3 James Street, Laverton North, VIC	\$35,500,000	May-15	238,070sqm	IN2Z	\$149/sqm
72-76 Cherry Lane, Laverton North, VIC	\$29,000,000	Feb-15	98,000sqm	IN2Z	\$296/sqm
315 Cooper Street, Epping (Melbourne Markets)	\$77,400,000	Jun-14	156,000sqm	PD1Z	\$496/sqm
254-294 Wellington Road, Mulgrave	\$62,000,000	Dec-13	144,000sqm	SUZ6	\$430/sqm

The sales evidence indicates values between \$107 and \$496 per square metre for industrial sites.

Englobo Residential Sales Evidence

In undertaking our assessment, we have taken into consideration sales transactions of comparable residential englobo parcels. The sales evidence is detailed in summary below. Due to the scarcity of comparable development site sales within the immediate Altona North area, we have had regard to sales sites across broader metropolitan Melbourne.

Residential Sales Evidence

Source: EY, 2017

Address	Sale Price (excl. GST)	Sale Date	Land Area (sqm)	Zoning	Reflects \$/sqm of Land Area
125 Beachley Street, Braybrook	\$62,000,000	Mar-17	115,000 sqm	GRZ	\$539 / sqm
125 Ashley Street, Braybrook	\$35,100,000	Mar-17	44,400 sqm	GRZ	\$791 / sqm
Beachley Street, Braybrook	\$62,000,000	Mar-17	115,000 sqm	GRZ	\$539 / sqm
341-383 Francis Street, Yarraville	c.\$172,000,000	Nov-16	237,900 sqm	GRZ	\$723 / sqm
82-96 Hampstead Road, Maidstone	\$41,500,000	May-16	41,111 sqm	MUZ	\$1,009 / sqm
11-19 Whitehall Street, Footscray	\$18,000,000	Dec-15	13,814 sqm	ACZ1	\$1,303 / sqm
9 & 9A Sutton Street, South Kingsville	\$20,000,000	Dec-15	20,200 sqm	IND	\$990 / sqm
43-57 Buckley Street, Seddon	\$20,900,000	Aug-15	14,410 sqm	ACZ1	\$1,450 / sqm
Pentridge Boulevard, Coburg	c.\$27,000,000	Apr-15	412,700 sqm	ACZ1	\$654 / sqm
124-188 Ballarat Road, Footscray	\$60,000,000	Jun-14	33,460 sqm	MUZ	\$1,793 / sqm
78 Middleborough Road, Burwood	\$65,000,000 (42 month settlement) \$54,000,000 (Cash Equivalent) Plus Remediation \$68,000,000	May-14	204,900 sqm	GRZ / C1Z	\$317 / sqm \$264 / sqm (CE) \$332 / sqm (CE remediated)
626 Heidelberg Road, Alphington	c.\$76,000,000	Jun-13	164,600 sqm	MUZ	\$461 / sqm

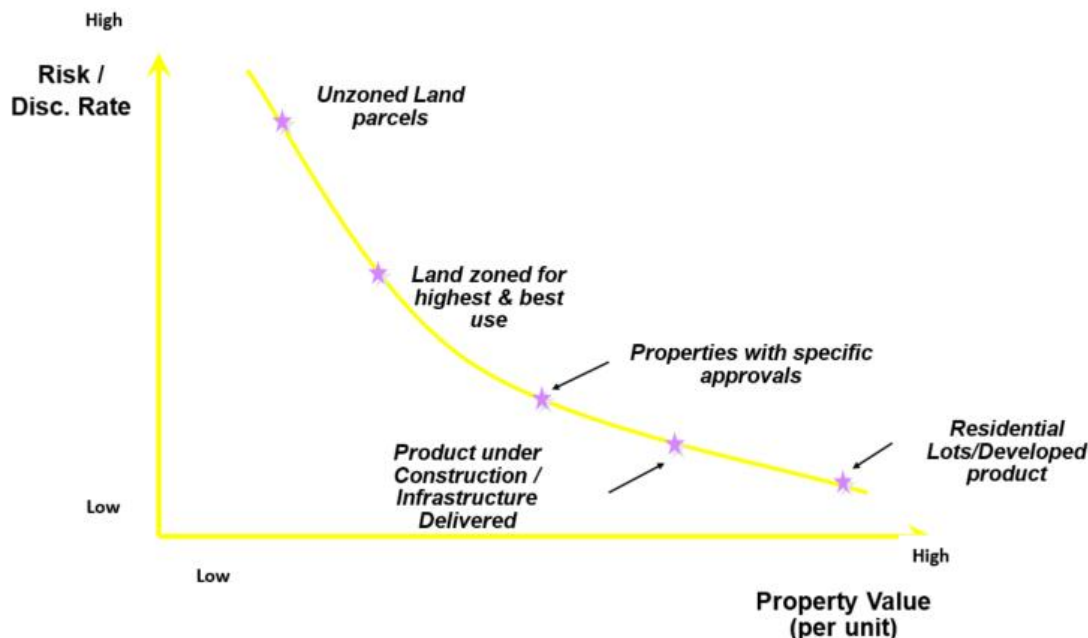
The sales evidence indicates values between \$332 and \$1,793 per square metre for residential sales.

Value Uplift / De-risking Sites

- ▶ The level of risk applicable to a redevelopment project is reflected in the discount rate applied to the expected cash flow in deriving value and corresponding on returns earned.
- ▶ The level of risk is tied to certainty in development outcomes and derisking the site to achieve the highest and best use of the site (i.e. planning approvals / removing site constraints / services to the site / delivery of end product and revenue)
- ▶ Over time the owner/developer works to eliminate these risks to improve the value of the land (lowering the effective discount rate).
- ▶ In terms of land redevelopment, this value creation peaks when individual lots or built form product are sold to end users.

Value Uplift and Derisk

Source: EY, 2017



Critical Assumptions

EY have made the following critical assumptions in regards to the land area being rezoned to residential as covered by Amendment C88:

- ▶ Our estimate has been prepared as at the date of estimate with regard to the prevailing market conditions at that date.
- ▶ We have assumed that the site is cleared, and is fully remediated and not affected by contamination
- ▶ We have assumed the Subject Property has been rezoned to a “residential” zone as at the date of valuation, and therefore we have not factored any risk, timeframes or planning costs.
- ▶ We have not undertaken a residual land value method due to the absence of costings and plans for the C88 area.
- ▶ Our estimate assumes that a likely sales scenario of the sites being sold as 3 separate lots of 20 hectares is likely to occur. Smaller lot sales of say 20 hectares would allow a larger prospective buyer market as opposed to a 60 hectare site sale.
- ▶ We understand that no DCPs have been finalised for the area, and as such we have not allocated any infrastructure costings to the estimate of value.
- ▶ We have assumed no heritage impacts.
- ▶ We have assumed no affordable housing is required within a proposed redevelopment.
- ▶ We have assumed no road impost or cost obligations.
- ▶ We have assumed that the Subject Property is held in an unencumbered freehold title.

Estimate of Value Calculations

In regards to assessment of current industrial zoning, we have had consideration to comparable sales evidence and adopted a rate per hectare to the proposed land area. We have determined a rate per square metre of \$300 - \$350 and applied to the proposed 60 hectare land parcel.

In regards to an assessment of the proposed residential zoning, we have had consideration to comparable sales evidence and adopted a rate per hectare to the proposed land area. We have determined a rate per square metre of \$900 - \$1,000 and applied to the proposed 60 hectare land parcel.

Description	Assumed Land Area (sqm)	Assessed Range		Assessed Rate (\$ / psm)
Assuming that the land is the current industrial zoning	600,000	Low	@	\$300 / psm
		High	@	\$350 / psm
Assuming that the land is the proposed residential zoning	600,000	Low	@	\$900 / psm
		High	@	\$1,000 / psm

Conclusion

Our preliminary sense is that a potential “three-fold” increase could be applied to any industrial zoned land in C88, in order to estimate the likely value of the land should the proposed rezone to residential occur. As such our assessment of value (excluding GST), as at 13 November 2017, is as follows:

Englobo Industrial Land

*Based on an assumed land area of 60 hectares: **\$300 to \$350 per square metre (excl. GST)***

Englobo Residential Land

*Based on an assumed land area of 60 hectares: **\$900 to \$1,000 per square metre (excl. GST)***

Please note our advice does not constitute a formal valuation, and has been provided solely to the party to whom it is addressed and for no other purpose. Should any of these assumptions adopted in this report vary or prove incorrect to that adopted, this report should be forwarded to the valuer for comment, and we strictly reserve the right to review and amend this assessment if necessary.

We thank you for your instructions.

Your sincerely,



Marcus Willison, FAPI
Certified Practising Valuer
Partner, Ernst & Young

APPENDIX A



Ernst & Young
8 Exhibition Street
Melbourne VIC 3000 Australia
GPO Box 67 Melbourne VIC 3001

Tel: +61 3 9288 8000
Fax: +61 3 8850 7777
ey.com/au

8 November 2017

Hobsons Bay City Council
c/o Sarah Day
Associate – Public Law
Maddocks
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008

Email: sarah.day@maddocks.com.au

Dear Sarah,

Provision of Professional Services – Expert Witness Report – Planning Scheme Amendment C88


Thank you for allowing Ernst & Young ("we" or "EY") to provide a proposal to undertake advisory services (the "Services") for Hobson Bay City Council ("you", "Client" or "Hobson Bay") relating to the estimate of value of land within the Planning Scheme Amendment C88 for an upcoming Panel Hearing.

We appreciate the opportunity to assist you and look forward to working with you.

The attached Statement of Work describes the scope of the Services, our fees for the Services, and any additional arrangements. The Services will be subject to the terms and conditions of this letter, together with its attachments, including the General Terms and Conditions, the applicable Statement of Work and any other Appendices (together, this "Agreement").

Please sign this letter in the space provided below to indicate your agreement with these arrangements and return it to myself at your earliest convenience. If you have any questions about any of these materials, please do not hesitate to contact myself so that we can address any issues you identify before we begin to provide the Services.

Yours sincerely,



Marcus Willison
Partner, Real Estate Advisory Services



2

AGREED BY Hobsons Bay City Council:

By (Authorised Representative):

Maddocks

8 November 2017

Signature

Date

Sarah Day

Associate

Name

Title

Encl:

- ▶ Copy of this letter with all appendices for you to sign and return
- ▶ Appendix A - Statement of Work
- ▶ Appendix B - General Terms and Conditions



Appendix A - Statement of Work

1 Scope of our Services

We understand that you are seeking the services of a professional real estate advisor to provide estimate of value on the basis of the following:

1. The generic value of the developable land (say 60 hectares) covered by Amendment C88, calculated on a residual land value basis assuming the land can only be used for the purposes set out under the current zoning of the land, being englobo industrial development land.
2. The generic value of the developable land covered by Amendment C88, calculated on a residual land value basis assuming the higher value mix of uses made possible by the proposed new planning controls under the amendment, being principally residential land (same 60 hectares).

Our estimate of value will be undertaken utilising the direct comparison method under both the current zoning and under the proposed new zoning. If plans and costings are available, we can undertake a residual land value method.

Upon completion we will provide a written estimate of value report that will detail our assumptions and methodology and indicate our conclusion.

Limitation of our Scope

Subject to our obligation to conduct our work with reasonable skill and care, we shall have no liability for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees, or agents of Hobsons Bay or any other person of whom we make enquiries except to the extent that such loss or damage arises as a result of our bad faith or wilful default or where the withholding, concealment or misrepresentation should have been apparent to us without further enquiry from the information provided to us and required to be considered by us under the terms of our assignment.

If we become aware, in carrying out our work, of any withholding, concealment or misrepresentation, which we believe will have material implications for the performance of our work, we will inform you as soon as reasonably practicable.

2 Assignment Team

In allocating staff on the engagement Ernst & Young will have regard to the level of skill, experience and responsibility required to provide the services.

Marcus Willison, Partner at Ernst & Young will be the Valuer on this Project, he will be assisted by Assistant Valuer, Danielle Hardy.



3 Timetable

We will commence work immediately upon confirmation from you that the terms of the assignment as set out in this letter are accepted, with delivery of the Report by close of business Friday 10 November 2017.

We will notify you as soon as practicable if it appears likely that there will be any significant delays in the above timetable.

4 Fees

We refer you to Sections [31 to 33] of Appendix B – General terms and conditions - for an explanation of our basis for charging (where fees have not otherwise been agreed) and other matters relating to our fees and invoicing arrangements.

Based on the scope of services and estimated hours to complete the respective tasks, our fixed fee quote is **\$10,000 exclusive of GST**.

Should additional tasks be required outside of the scope of services provided, these will be charged on a discounted hourly basis at an agreed rate.

5 Information Requirements

All information will be provided to us within a mutually agreeable period of time.

As we become aware of the need for information we will discuss this with you. If you are not able to provide us with any of the information we request, this may affect our ability to conclude our engagement on the terms indicated above or at all. We will inform you of any restriction to our engagement as a result of incomplete information.

6 Presentation of Results

We will provide a written report outlining our analysis and findings.

The report will be provided to you for the Purpose only and should not be used or relied upon for any other purpose, or disclosed to, or discussed with, any other party without our prior consent in writing.

Any summary of, or reference to, the Report or any oral presentation in relation to the Report, any submission of the Report, in whole or in part, to anyone who is not a member of management of Hobsons Bay or its subsidiaries will be subject to our prior review and written approval. Our recommendations in the Report cannot be used other than for the specific Purpose set out in the Report.

Informal oral comments made in discussions with you or presentations to you about any Report will not have any greater significance than explanations or other material contained in the Report and reliance should only be placed on information and comments set out in the final written Report.



During the course of the assignment we may provide status reports or show drafts of our Reports to you. This is done on the basis that they are provided to inform you of progress and significant findings identified to date, and draft reports are subject to revision and alteration as further work is performed or further information received.

7 Use of our Report

Our advice and the Report will be provided to you for the Purpose only and should not be used or relied upon for any other purpose, or should disclosed to, referred to or discussed with, any other party without our prior consent in writing, save as set out in Appendix B – General terms and conditions.

8 Conflicts of Interest

We are not aware of any conflict of interest either in relation to the firm or the individual professional staff to be involved in this assignment which would impact on our ability to provide an independent and unbiased opinion.



Appendix B - General Terms and Conditions

Our Relationship with You

1. We will perform the Services using reasonable skill and care.
2. We are a member of the global network of Ernst & Young firms ("**EY Firms**"), each of which is a separate legal entity.
3. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
4. We may subcontract portions of the Services to other EY Firms, as well as to other service providers, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Reports (as defined in Section 11), the performance of the Services, and our other obligations under this Agreement.
5. We will not assume any management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services.

Your Responsibilities

6. You shall assign a qualified person to oversee the Services. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
7. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including access to records, systems, premises and people) that we reasonably require to perform the Services.
8. To the best of your knowledge, all information provided by you or on your behalf ("**Client Information**") will be accurate and complete in all material respects. The provision of Client Information to us will not infringe any copyright or other third-party rights.
9. We will rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.

10. You shall be responsible for your personnel's compliance with your obligations under this Agreement.

Our Reports

11. Any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement ("**Reports**"), other than Client Information, are for your internal use only (consistent with the purpose of the particular Services) including your board of directors and your audit committee.
12. You may not disclose a Report (or any portion or summary of a Report) externally (including to your affiliates), or refer to us or to any other EY Firm in connection with the Services, except:
 - (a) to your lawyers (subject to these disclosure restrictions), who may review it only in connection with advice relating to the Services,
 - (b) to the extent, and for the purposes, required by law (and you will promptly notify us of such legal requirement to the extent you are permitted to do so),
 - (c) to other persons (including your affiliates) with our prior written consent, who have executed an access letter who may use it only as we have specified in our consent, or
 - (d) to the extent it contains Tax Advice, as set forth in Section 13.

If you are permitted to disclose a Report (or a portion thereof), you shall not alter, edit or modify it from the form we provided.

An "affiliate" of an entity (for the purpose of this Agreement) shall mean an entity or individual that controls, is controlled by, or is under common control with, the first entity, and "control" means the ability to direct the policies or operations of an entity, whether by contract, ownership of equity interests, or otherwise.

13. You may disclose to anyone a Report (or any portion thereof) solely to the extent that it relates to tax matters, including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate ("**Tax**").



Advice). With the exception of tax authorities, you shall inform those to whom you disclose Tax Advice that they may not rely on it for any purpose without our prior written consent. Where tax law services are provided, disclosure of our advice to a third party may result in a waiver of legal professional privilege.

14. You may incorporate into documents that you intend to use our summaries, calculations or tables based on Client Information contained in a Report, but not our recommendations, conclusions or findings. You must assume sole responsibility for the contents of those documents and you must not externally refer to us or any other EY Firm in connection with them. Where tax law services are provided, disclosure of such internal documents may result in a waiver of legal professional privilege.
15. You may not rely on any draft Report. We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after its delivery.

Limitations

16. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, any amount with respect to any loss of profit, data or goodwill, or any indirect or consequential costs, loss or damage in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.
17. (a) If the Competition and Consumer Act 2010 (Cth), the Corporations Act 2001 (Cth) or any other legislative provision prohibits or otherwise precludes the restriction, modification or exclusion of any statutory condition, warranty, guarantee, right, remedy or other benefit, Sections 16, 17 and 18 do not restrict, modify or exclude it. Unless prohibited by law, no term, condition or warranty is implied except as expressly provided in this Agreement.
(b) Our liability is limited by a scheme approved under professional standards legislation applicable to the Services provided ("Scheme"), except where we are a financial services licensee. A copy of the Scheme can be obtained from us upon request.
(c) If our liability is not limited by a Scheme, You (and any others for whom Services are provided) may not recover from us, in contract or tort (including negligence), under statute or

otherwise, aggregate damages in excess of the monetary ceiling applicable to the fees paid for the Services under the Scheme in connection with claims arising out of this Agreement or otherwise relating to the Services.

- (d) If a term is implied into this Agreement by law, which cannot be excluded, you agree that in the event that we breach the term we may, in our absolute discretion and to the extent it is allowed by law, choose either to re-supply the Services or pay you the cost of having the Services re-supplied.
18. If we are liable to you (or to any others for whom Services are provided) under this Agreement or otherwise in connection with the Services, for loss or damage (including interest and costs) to which any other persons have also contributed, our liability to you shall be several, and not joint, with such others, and shall be limited to our fair share of that total loss or damage which is agreed between us or ascribed to us by a court or tribunal of competent jurisdiction, based on our contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment.
19. The limitations in Section 17 will not apply to losses or damages caused by our fraud or to the extent prohibited by applicable law or professional regulations.
20. You may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("EY Persons"). You shall make any claim or bring proceedings only against us.

Indemnity

21. To the fullest extent permitted by applicable law and professional regulations, you shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates and lawyers) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs and any goods and services tax payable by us on amounts paid by you under



this indemnity) incurred by us or the other EY Firms or the EY Persons which is related to, arises out of, or is in any way associated with the third party's use of or reliance on any Report (including Tax Advice) disclosed to it by or through you or at your request. You shall have no obligation hereunder to the extent that we have specifically authorized, in writing, the third party's reliance on the Report.

Intellectual Property Rights

22. We may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("**Materials**") that we own in performing the Services. Notwithstanding the delivery of any Reports, we retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them).
23. Upon payment for the Services, you may use any Materials included in the Reports, as well as the Reports themselves as permitted by this Agreement.

Confidentiality

24. Except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information (other than Tax Advice) provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Either of us may, however, disclose such information to the extent that it:
 - (a) is or becomes public other than through a breach of this Agreement,
 - (b) is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information,
 - (c) was known to the recipient at the time of disclosure or is thereafter created independently,
 - (d) is disclosed as necessary to enforce the recipient's rights under this Agreement, or
 - (e) must be disclosed under applicable law, legal process or professional regulations.

25. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.

26. Unless prohibited by applicable law, we may disclose Client Information to other EY Firms, EY Persons and third parties providing services on our behalf who may collect, use, transfer, store or otherwise process it (collectively "**Process**") in the various jurisdictions in which they operate either for purposes related to the provision of the Services, and/or to comply with regulatory requirements, to check conflicts, for quality, risk management, financial accounting purposes and/or the provision of other administrative support services (collectively "**Process Purposes**"). We shall be responsible to you for maintaining the confidentiality of Client Information.

27. With respect to any Services, if U.S. Securities and Exchange Commission auditor independence regulations apply to the relationship between you or any of your associated entities and any EY Firm, you represent, to the best of your knowledge, as of the date of this Agreement, that neither you nor any of your affiliates has agreed, either orally or in writing, with any other advisor to restrict your ability to disclose to anyone the tax treatment or tax structure of any transaction to which the Services relate. An agreement of this kind could impair an EY Firm's independence as to your audit or that of any of your affiliates, or require specific tax disclosures as to those restrictions. Accordingly, you agree that the impact of any such agreement is your responsibility.

Data Protection

28. For the Process Purposes referred to in Section 26 above, we and other EY Firms, EY Persons and third parties providing services on our behalf may Process Client Information that can be linked to specific individuals ("**Personal Data**") in various jurisdictions in which we and other EY Firms, EY Persons and third parties providing services on our behalf operate (EY office locations are listed at www.ey.com). We will Process the Personal Data in accordance with applicable law and professional regulations including (without limitation) the Privacy Act (1988) (Cth). We will require any service provider that Processes Personal Data on our behalf to adhere to such requirements. A copy of our Privacy Policy statement may be obtained on request.



29. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been Processed in accordance with applicable law.

Fees and Expenses Generally

30. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the applicable Statement of Work. You shall pay our engagement administration charge of 3% of our fees which covers our costs, including courier charges, photocopying, postage, telephone calls, facsimiles and stationery.

You shall also reimburse us for other reasonable expenses incurred in performing the Services. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other than taxes imposed on our income generally). In relation to GST specifically, if our supply to you is taxable you will pay additional consideration calculated as the prevailing GST rate multiplied by our GST exclusive fees.

Unless otherwise set forth in the applicable Statement of Work, payment is due within 14 days following receipt of each of our invoices. If you direct us to issue an invoice to another party, you shall remain responsible for payment until our invoice is paid in full. We may charge interest on invoices which are not paid when due at the applicable Westpac Banking Corporation Reference Lending Rate from the due date to the date we receive payment. Accounts may be paid by electronic funds transfer, internet banking or cheque. Credit card payments are not accepted.

31. We may charge additional professional fees if events beyond our control (including your acts or omissions) affect our ability to perform the Services as originally planned or if you ask us to perform additional tasks.
32. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

Force Majeure

33. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

Term and Termination

34. This Agreement applies to the Services whenever performed (including before the date of this Agreement).
35. This Agreement shall terminate on the completion of the Services. Either of us may terminate it, or any particular Services, earlier upon 14 days' prior written notice to the other. In addition, we may terminate this Agreement, or any particular Services, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations.
36. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement.
37. Our respective confidentiality obligations under this Agreement shall continue for a period of three years following the termination of this Agreement. The other provisions of this Agreement that give either of us rights or obligations beyond its termination shall continue indefinitely following the termination of this Agreement.

Governing Law and Dispute Resolution

38. This Agreement, and any non-contractual matters or obligations arising out of this Agreement or the Services shall be governed by, and construed in accordance with, the laws of the state or territory of the Ernst & Young office shown on the Cover Letter. We both agree and irrevocably submit to the exclusive jurisdiction of the applicable state.
39. If there is a dispute relating to the Services or this Agreement, the parties must submit the dispute to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre ("ACDC"). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the

provisions of this Section. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate unless the parties otherwise agree.

Miscellaneous

40. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
41. Both of us may execute this Agreement (including Statements of Work), as well as any modifications to it by electronic means and each of us may sign a different copy of the same document. Both of us must agree in writing to modify this Agreement or any Statement of Work hereunder.
42. Each of us represents that the person signing this Agreement and any Statement of Work hereunder on its behalf is expressly authorized to execute them and to bind each of us to their terms.

You represent that your affiliates and any others for whom Services are performed shall be bound by the terms of this Agreement and the applicable Statement of Work.
43. You agree that we and the other EY Firms may, subject to professional obligations, act for other clients, including your competitors.
44. Neither of us may assign any of our rights, obligations or claims under this Agreement.
45. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect. Sections 17(c) and 21 do not apply if:
 - (a) such provision is prohibited by applicable law, regulation, the rules and interpretations of the U.S. SEC or other applicable rules and interpretations concerning auditor independence;
 - (b) the Services include income tax preparation services associated with the preparation of U.S. tax returns for a U.S. SEC audit client; or
 - (c) the Client is a U.S. SEC audit client and performance of these non-audit Services will

have more than an insignificant effect on EY's audit engagement by either:

- (i) affecting EY's audit procedures or scope; or
 - (ii) producing information that would be used by EY as audit evidence.
46. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Cover Letter, (b) the applicable Statement of Work and any annexes thereto, (c) these General Terms and Conditions, and (d) other annexes to this Agreement.
 47. Neither of us may use or reference the other's name, logos or trademarks without its prior written consent, provided that we may use your name publicly to identify you as a client in connection with specific Services or otherwise.
 48. The limitations in Sections 16 to 18 and Section 20 and the provisions of Sections 21, 26, 28, and 43 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.
 49. We are committed to ensuring the health and safety of EY Persons. To this end, we expect that you will:
 - (a) ensure that your premises are safe for EY Persons who may attend your premises;
 - (b) provide EY Persons who visit your premises or perform work at your premises with:
 - (i) any site induction under your policies;
 - (ii) any information about hazards or risks to health and safety; and
- details of any emergency plans and procedures (including evacuation plans) relating to the premises



Contact us

CANBERRA

Level 2, 28-36 Ainslie Place
Canberra ACT 2601
+61 2 6257 4525
sgsact@sgsep.com.au

HOBART

PO Box 123
Franklin TAS 7113
+61 421 372 940
sgstas@sgsep.com.au

MELBOURNE

Level 14, 222 Exhibition St
Melbourne VIC 3000
+61 3 8616 0331
sgsvic@sgsep.com.au

SYDNEY

209/50 Holt St
Surry Hills NSW 2010
+61 2 8307 0121
sgsnsw@sgsep.com.au