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Memorandum

To: Tony Arias, Tamala Park Regional Council — 24 August 2012

From: Chris Jenkins and Timothy Martino, Ernst & Young

Tamala Park – Illustrative Examples of Potential GST Outcomes under 4 Alternative Land Sale Scenarios

The purpose of this memorandum is to provide TPRC with illustrative examples of potential GST outcomes under alternative scenarios to aid TPRC in responding to queries raised by the Local Councils as to the potential benefits of the Local Councils making sales of Tamala Park land direct to third party buyers under an item 4 margin scheme methodology as opposed, for example, to first selling the land to TPRC.

In this memo, we have considered potential GST outcomes under 4 different scenarios on the basis that the relevant parties are not considered to be associates for GST purposes. The scenarios are as follows:

1. The Local Councils are entitled to use and do in fact use an item 4 margin scheme methodology for all sales of the land by calculating the margin by deducting the unimproved value of the land at the date of sale from sale proceeds
2. The Local Councils are not entitled to use an item 4 margin scheme methodology for any sales of the land and instead are entitled to use and do in fact use an item 1 margin scheme methodology by calculating the margin by deducting the 1 July 2000 valuation of the land from sale proceeds
3. The Local Councils sell the land to TPRC as at today for $122.15 million.
4. The Local Councils sell the land to TPRC stage by stage for market value ($807 million) over time and TPRC then subsequently makes sales to the public of $807 million.

In preparing these illustrative examples, we have used the following high level estimated figures as provided by you. We note that any changes to these figures will result in changes to the relevant GST outcomes outlined in this memo, which are intended as illustrative examples only. Indeed, the dollar figures provided in relation to the potential outcomes are intended only to illustrate the potential relative benefits under one scenario as opposed to another scenario.

- Value of the land at 1 July 2000 is $24 million
- Value of the land currently (August 2012) is $122.15 million. There are minimal improvements on the land at this date valued approximately at $5.2 million. Therefore, the unimproved land valuation at this date is $116.95 million.
- Sales proceeds received for all sales of lots from the land will be $807 million. At the time of sale the value of the improvements on the land will be $320 million. Therefore, the unimproved land valuation at this date is $487 million.

Scenario 1 – no transfer by Local Councils to TPRC of beneficial interest in land, land sold direct by Local Councils to third parties using an item 4 margin scheme methodology

- There is no taxable supply by the Local Councils to TPRC at the current date. Therefore, nil GST is payable by the Local Councils at the current date.

- There are taxable supplies by Local Councils to the public in the future for $807 million in sale proceeds. The margin scheme is available on the basis the Local Councils are regarded as having held the land since 1 July 2000. The land had no improvements thereon at 1 July 2000, therefore, the margin is calculated as follows:
  - Sale Proceeds $807 million
  - Sale date unimproved valuation $487 million
  - Margin $320 million
- A GST liability of $29.09 million ($320 million x 1/11) arises. This is because item 4 allows the unimproved value of the land to be used as a base cost. As there are $320 million of improvements the unimproved value is $487 million and there is a $320 million margin for GST purposes.
- Overall, GST of **$29.09 million** is therefore payable across the project in relation to sales of the land under this hypothetical scenario and using the estimated figures provided to us.

Scenario 2– no transfer by Local Councils to TPRC of beneficial interest in land, land sold direct by Local Councils to third parties but item 4 not available or not applied

- There is no taxable supply by the Local Councils to TPRC at the current date. Therefore, nil GST is payable by the Local Councils at the current date.
- There are taxable supplies by Local Councils to the public in the future for $807 million in sale proceeds. Item 1 of the margin scheme is available on the basis the Local Councils are regarded as having held the land since 1 July 2000. The margin is calculated as follows:
  - Sale Proceeds $807 million
  - Value of the land at 1 July 2000 $24 million
  - Margin $783 million
- A GST liability of $71.18 million ($783 million x 1/11) arises.
- Overall, GST of **$71.18 million** is therefore payable across the project in relation to sales of the land under this hypothetical scenario and using the estimated figures provided to us.

Scenario 3 – Transfer by Local Councils to TPRC of beneficial interest in land at current date and consideration received

- There is a taxable supply by the Local Councils to TPRC at the current date. The margin scheme can be agreed between the parties and can be used. Based on the above assumptions item 4 will allow the use of the unimproved value of the land as a base cost. Assuming that the consideration received was deemed to be the market value of the land at the current date then the margin is calculated as follows:
  - Sale Proceeds $122.15 million
  - Current date unimproved valuation $116.95 million
  - Margin $5.2 million
- $472,727 GST is payable by the Local Councils at the current date. This is because item 4 allows the unimproved value of the land to be used as a base cost. As there are $5.2 million improvements the unimproved value is $116.95 million and there is a $5.2 million margin for GST purposes.
- There are taxable supplies by TPRC to the public in the future for $807 million in sale proceeds. The margin scheme is available as the Local Councils previous supply was under the margin scheme. However, neither item 4 nor item 1 can be used as TPRC did not hold the land as at 1 July 2000. The margin is calculated as follows:
  - Sale Proceeds $807 million
  - Current value of the land $122.15 million
  - Margin $684.85 million

- A GST liability of $62.26million ($684.85 million x 1/11) arises.
- Overall, GST of **$62.73 million** is therefore payable across the project in relation to sales of the land under this hypothetical scenario and using the estimated figures provided to us.

Scenario 4 – Beneficial interest in improved land supplied by Local Councils to TPRC immediately prior to public sale and consideration received (back-to-back sales)

- There is a taxable supply by the Local Councils to TPRC immediately prior to public sale. The margin scheme can be agreed between the parties and can be used. Based on the above assumptions item 4 will allow the use of the unimproved value of the land as a base cost for the sales by the Local Councils to TPRC. Assuming that the consideration received was deemed to be the market value of the land at the date immediately prior to public sale, then the margin is calculated as follows:
    - Sale Proceeds $807 million
    - Unimproved Valuation $487 million
    - Margin $320 million

- $29.09 million of GST is payable by the Local Councils in relation to the supply to TPRC. This is because item 4 allows the unimproved value of the land to be used as a base cost. As there are $320 million worth of improvements, the unimproved value is $487 million at the date of sale.
- There are taxable supplies by TPRC to the public immediately after the transfer from Local Councils for $807 million in sale proceeds. The margin scheme is available as the Local Councils' previous supply was under the margin scheme. However, neither item 4 nor item 1 will be available as the land was acquired by TPRC after 1 July 2000. Therefore, the margin is calculated as follows:
    - Sale Proceeds $807 million
    - Consideration for Acquisition $807 million
    - Margin $0 million
- Overall, GST of **$29.09 million** is therefore payable across the project in relation to sales of the land under this hypothetical scenario and using the estimated figures provided to us.
- However, note that the above is on the basis that there is no delay between the point at which the Local Councils supply beneficial interest in the land to TPRC and the point at which TPRC supplies beneficial interest in the land to third party buyers. To the extent that there is a delay for any reason, there is a risk that the GST outcome under Scenario 4 would be less favourable than under Scenario 1.
- Indeed, it would then be possible that the underlying value of the land (apart from improvements) would further increase during that time. An additional amount of GST would not have been payable in relation to any such further increase if the Local Councils had simply supplied direct to third party buyers under item 4 (Scenario 1) but would be payable by TPRC under this Scenario 4 (as TPRC would not be entitled to use item 4 under this scenario).
- Moreover, to the extent that there is any delay, the Local Councils' GST liability will be payable earlier under Scenario 4 than would have been the case under Scenario 1.
- Note: To the extent that Local Councils transfer the land to TPRC for nil consideration, then assuming that the entities are not associates for GST purposes, there would be no GST at the time of transfer. However, on the subsequent sale by TPRC there would be a base cost of nil and GST payable on the full margin ($73.36 million).

Conclusions

We have laid out all the illustrative figures of the potential GST outcomes under the different hypothetical scenarios in the table in Appendix A attached. This table outlines the following in respect of the estimated numbers and values used:

- The best GST position is obtained where either:
    - the land is not transferred by the Local Councils to TPRC and item 4 is used for sales direct to the public (Scenario 1); **OR**
    - each lot is developed and then individually sold to TPRC immediately prior to a subsequent sale by TPRC to a buyer, i.e. back-to-back sales (Scenario 4)

- However, Scenario 4, where the lots are developed and then transferred by Local Councils immediately prior to sale to the public and back-to-back sales are conducted is impractical and largely unnecessary. It adds another level of sales to the project to be accounted for and an additional level of calculation and administration from a GST perspective.

- Moreover, to the extent that there is a delay for any reason under Scenario 4 between the point at which the Local Councils supply beneficial interest in the land to TPRC and the point at which TPRC supplies beneficial interest in the land to third party buyers, there is a risk that the GST outcome under Scenario 4 would be less favourable than under Scenario 1.

- Therefore, it is our view that Scenario 1 as outlined above is the optimal scenario with respect to this land development. It should be noted that the application of item 4 by the Local Councils would provide a significant GST benefit to the Local Councils over and above that which would be received were item 4 not used and a 1 July 2000 valuation were used instead. A potential GST benefit of **$42.09 million** would be lost by the Local Councils were item 4 available and were it not to be applied with the basic rule in item 1 instead applied.

- Whilst sale of the land to TPRC in its current form (Scenario 3) would provide a GST benefit of $8.45 million over and above that which would be realised by applying the basic margin scheme rules, applying this scenario would result in a GST benefit of **$33.64 million** being lost by the Local Councils if item 4 under Scenario 1 could otherwise have been applied.

- Overall, Scenario 1 represents the most beneficial and administratively easily achievable outcome with respect to the project from a GST perspective.

- It is difficult to see what advantages Scenario 4 would bring to the arrangements other than possibly reassuring any individual Local Councils which may still be concerned regarding whether the Establishment Agreement requires that the land be transferred to TPRC.

APPENDIX A – Summary of potential GST outcomes under four hypothetical scenarios

Hypothetical scenario	Project GST payable currently *(using the relevant assumptions and the high level estimated figures)*	Project GST payable in future *(using the relevant assumptions and the high level estimated figures)*	Total GST payable *(using the relevant assumptions and the high level estimated figures)*
Scenario 1 – no transfer by Local Councils to TPRC of beneficial interest in land, land sold direct by Local Councils to third parties Item 4 available	Nil	$29.09 million (application of item 4 means sale date unimproved valuation, GST paid on improvements only = $320 million x 1/11)	$29.09 million
Scenario 2 - no transfer by Local Councils to TPRC of beneficial interest in land, land sold direct by Local Councils to third parties Item 4 **not** available	Nil	$71.18 million	$71.18 million
Scenario 3 - transfer by Local Councils to TPRC of beneficial interest in land at current date and consideration received Item 4 available for initial supply by Local Councils to TPRC	$472,727	$62.26million	$62.73 million
Scenario 4 – Beneficial interest in improved land supplied by Local Councils to TPRC immediately prior to public sale and consideration received (back-to-back sales) Item 4 available for initial supply by Local Councils to TPRC	Nil	$29.09 million	$29.09 million