



AM C172 PORT PHILLIP PLANNING SCHEME: EVIDENCE OF MARCUS SPILLER REGARDING SOCIAL & AFFORDABLE HOUSING



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1. INTRODUCTION

1.1 Credentials

1. 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.
2. 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.
3. I have more than 40 years' 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.
4. I have previously presented expert evidence at Panel and similar hearings.
5. Additional information regarding my qualifications and experience is included in Attachment A.

1.2 Instructions

6. I have been instructed by Best Hooper on behalf of the City of Port Phillip to provide expert evidence regarding the affordable housing aspects of Am C172.

1.3 Evidence preparation

7. My evidence is based on a review of the affordable housing provisions in the Incorporated Document which would apply to the Bertie Street development upon the approval of Am C172. These documents were supplied to me by Best Hooper.
8. The opinions in this expert evidence statement are my own.

2. EVIDENCE

2.1 Value capture and inclusionary requirements for social and affordable housing in Fishermans Bend

9. The Port Phillip Planning Scheme incorporates two mechanisms for the provision of affordable housing (as defined in the Planning and Environment Act) in Fishermans Bend. The **first** is a requirement for proponents to transfer social housing units at zero consideration at the rate of 1 dwelling for each additional 8 dwellings when developments exceed the dwelling density ratio nominated for the precinct in question in the Planning Scheme.
10. I characterise this as a *value sharing* mechanism. That is, proponents are required to purchase additional development capacity made available by the community above the nominated dwelling density rate, with payment being in the form of social housing provision.
11. The **second** mechanism calls on proponents to ensure that 6% of the dwellings they are providing are available as 'affordable housing' as defined in the Planning and Environment Act. The Scheme allows for proponents to propose alternative solutions to meet the affordable housing objective for Fishermans Bend. It also allows for waiver of this requirement if proponents can demonstrate that it would fatally compromise the viability of the project in question.
12. In my view, this second mechanism is best characterised as an *inclusionary infrastructure requirement* akin to open space contributions applied across the metropolitan area. That is, it is an *expected* feature of successive developments to ensure that, in aggregate, the adopted vision for Fishermans Bend is achieved.
13. The logic and justification for these two mechanisms must not be conflated. Value sharing is warranted regardless of any inclusionary requirements for affordable housing, open space and any other infrastructure. Similarly, inclusionary standards are warranted regardless of whether a value sharing scheme is in place.

2.2 'Apples and oranges' conundrum

14. The 6% inclusionary target in the Planning Scheme is reproduced in the following text box. The provision is clear on the outcome to be achieved (6% of all dwellings must be 'affordable' as defined in the Act) but not on how the Responsible Authority (RA) might judge the acceptability or otherwise of the proponent's proposed method of achieving this outcome.
15. In particular, it does not provide guidance as to what would be acceptable in terms of the \$ value of the affordable housing solution that might be offered by a developer.

22.15-4.3 Providing for Affordable housing

Affordable housing

It is policy to assess proposals against the following criteria:

- Development should provide at least six per cent of dwellings permitted under the dwelling density requirements in the Capital City Zone (excluding any Social housing uplift dwellings) as Affordable housing, unless, any of the following apply:
 - The built form envelope available on the site makes it impractical to do so.
 - It can be demonstrated that the development will contribute to the Affordable housing objectives of this policy while providing less than the minimum amount.
 - It can be demonstrated that meeting the Affordable housing objectives of this policy would render the proposed development economically unviable.
- Affordable housing should:
 - Be a mix of one, two and three bedrooms that reflects the overall dwelling composition of the building.
 - Have internal layouts identical to other comparable dwellings in the building.
 - Be externally indistinguishable from other dwellings.

16. As is clear from the above extract from the Planning Scheme, proponents may take a multiplicity of approaches in response to the 6% target. These can range from subsidised home ownership, to time bounded affordable rental, to transfer of dwellings to community housing providers (CHPs) at a discounted price, to transfer of some dwellings at zero consideration etc.
17. If a proponent were to come forward with an offer to transfer 6% of all dwellings at zero consideration to a Housing Association or similar registered provider of affordable housing, there would be no question of compliance with the Planning Scheme.
18. However, if the proponent offers anything less than this, the Scheme is silent as to what affordable housing solution in response to the 6% target would be acceptable. For example, if the proponent offers to transfer 6% of dwellings to a Housing Association not at zero consideration but at a discount to market price, how does the Responsible Authority or review body determine what is an acceptable discount – 10%, 20%, 30%, 50% or any other amount etc? The Scheme provides no guidance on this question. In my opinion, this lack of guidance makes it difficult for all parties to efficiently come to affordable housing agreements to give effect to the 6% target.
19. In my opinion, a way needs to be found of ‘comparing apples and oranges’ in Am C172 and in all other similar scenarios in Fishermans Bend when proponents come forward with their solutions in response to the 6% target. This is so the Responsible Authority can determine whether a particular proponent is offering a reasonable deal compared to what might have been offered by other parties in other development applications.
20. I believe it is important to convey to the development industry what Government believes is a reasonable response to the 6% in terms that developers can understand, that is, what would compliance with the target ‘cost’ and what needs to be factored into their feasibility assessments.

21. It is possible to compare disparate packages of affordable housing responses by expressing the value of the housing benefit being offered in *net present value* (NPV) terms.
22. For example, if a proponent offers to make, say, a one bedroom dwelling available at a 20% discount to market rent for 15 years after which the dwelling reverts to market disposition, the present value of this response would be around \$40,000 assuming a market rent of \$475/week using a 4% real interest rate.
23. Assuming a market value of \$420,000 for a one bedroom affordable housing unit transferred to a Housing Association at zero consideration, the market rent discounted unit noted above would, in value terms, be the equivalent of 9.5% of a transferred unit (\$40,000/\$420,000). In other words, providing 10 (rounded down) affordable housing units at a 20% discount to market rent would deliver the same housing value as transferring one unit at zero consideration.
24. The various components of the proponent's response could and should be valued in present value terms and added together to provide a valuation of the total package.
25. It is then necessary to determine whether this valuation meets a reasonable minimum value requirement. As I have discussed, specification of what this reasonable minimum value requirement might be is missing in the 6% inclusionary target set out in the Planning Scheme.
26. I now turn to my views as to how this minimum value expectation of a proponent should be set for the purpose of striking affordable housing agreements. I have developed this methodology from first principles as I can find no guidance on this matter in the Planning Scheme or the wider planning system.

2.3 Benchmarking the 6% target

27. I have approached the question of what would be a reasonable minimum affordable housing requirement for 118 Bertie Street, consistent with the 6% target, by considering, firstly, what is the requirement for affordable (rental) housing in the wider Fishermans Bend community followed by an assessment of how much of this need is appropriately funded via the development assessment process (as distinct from traditional procurement through State and Commonwealth budgets). From these two considerations I have arrived at a recommended test of sufficiency for the proponent's response to the 6% affordable housing requirement.
28. Work commissioned by the City of Melbourne and conducted by SGS shows that the current need for affordable rental housing in metropolitan Melbourne, inclusive of social housing as defined in the Planning & Environment Act, amounts to 13% of all households (see Table 1).
29. Social and affordable housing is essential infrastructure for the formation of successful communities. In this sense, it is similar to the provision of transport networks, water cycle management, open space systems, hospitals and clinics, schools and other community facilities.
30. Like these other infrastructure systems, the planning of new communities, such as Fishermans Bend, should allow for the provision of affordable rental housing (as defined in the Planning & Environment Act) in line with projected need.
31. In my opinion, planning for Fishermans Bend should factor in a long run requirement for affordable rental housing in line with the metropolitan average. Based on the best available data, 13% of all dwellings in the Precinct should be affordable rental housing (within the income parameters defined in the Planning & Environment Act).

TABLE 1: METROPOLITAN MELBOURNE HOUSING MARKET SEGMENTATION, 2016

	Other households (a)	Moderate rental stress (b)	Severe rental stress (c)	Outside private market (d)	Total households (a + b + c + d)	Quantum of Demand (b + c + d)	Demand share of total households
Homeless	NA	NA	NA	20,429	20,429	20,429	100%
Living in social housing	NA	NA	NA	48,978	48,978	48,978	100%
Very low income households	300,997	30,359	52,672	NA	384,027	83,031	22%
Low income households	279,465	35,822	14,837	NA	330,124	50,659	15%
Moderate income households	320,328	23,577	4,564	NA	348,470	28,141	8%
Above moderate income households	641,333	NA	NA	NA	641,333	0	0%
All households	1,542,123	89,758	72,073	69,407	1,773,361	231,238	13%

Source: SGS Economics & Planning, based on ABS Census 2016 and VIF 2016

Note: Other households includes both rental households who are not in rental stress and non-rental households, and does not contribute to demand for social and affordable housing

32. The provision of social and affordable housing infrastructure delivers three functions for the community:
1. **alleviating or averting poverty**
 2. **improving the operation of labour markets** by ensuring adequate accommodation for essential workers and skilled staff for key industries, and
 3. **creating better places**, recognising that places of diversity and inclusion are highly valued and sanctioned in policy.
33. In my opinion, the last of these three functions – creating better places - lies squarely within the domain of place makers and town planning.
34. I place equal value on each of the three functions of affordable housing infrastructure cited above. On this basis, the development approval system could be expected to fund *one third* of the overall cost of providing this form of housing in the community. The other two thirds would be the responsibility of traditional social housing procurement programs.
35. The assessed requirement for social and affordable housing infrastructure in Fishermans Bend is 13% of all dwellings. The planning system could therefore be reasonably expected to provide the equivalent of 4% of all new dwellings as permanent affordable rental housing within the parameters defined in the Planning & Environment Act (13% x 33% rounded down).
36. In my view, the obligation to help form a successful community at Fishermans Bend through the provision of adequate affordable housing infrastructure is not confined to the proponents of residential development. As with other forms of infrastructure, this obligation also applies to the proponents of non-residential development, in this, case retail and commercial development.
37. Moreover, this obligation to contribute to essential infrastructure should apply regardless of the tenure of residential development. In my view, there should be no

concession in terms of incorporation of affordable housing, as defined in the Planning Act, in the case of Build to Rent or any other form of housing tenure, as there should be no concession in, say, public open space contributions, for these forms of residential development. This essential infrastructure is required regardless of housing tenure.

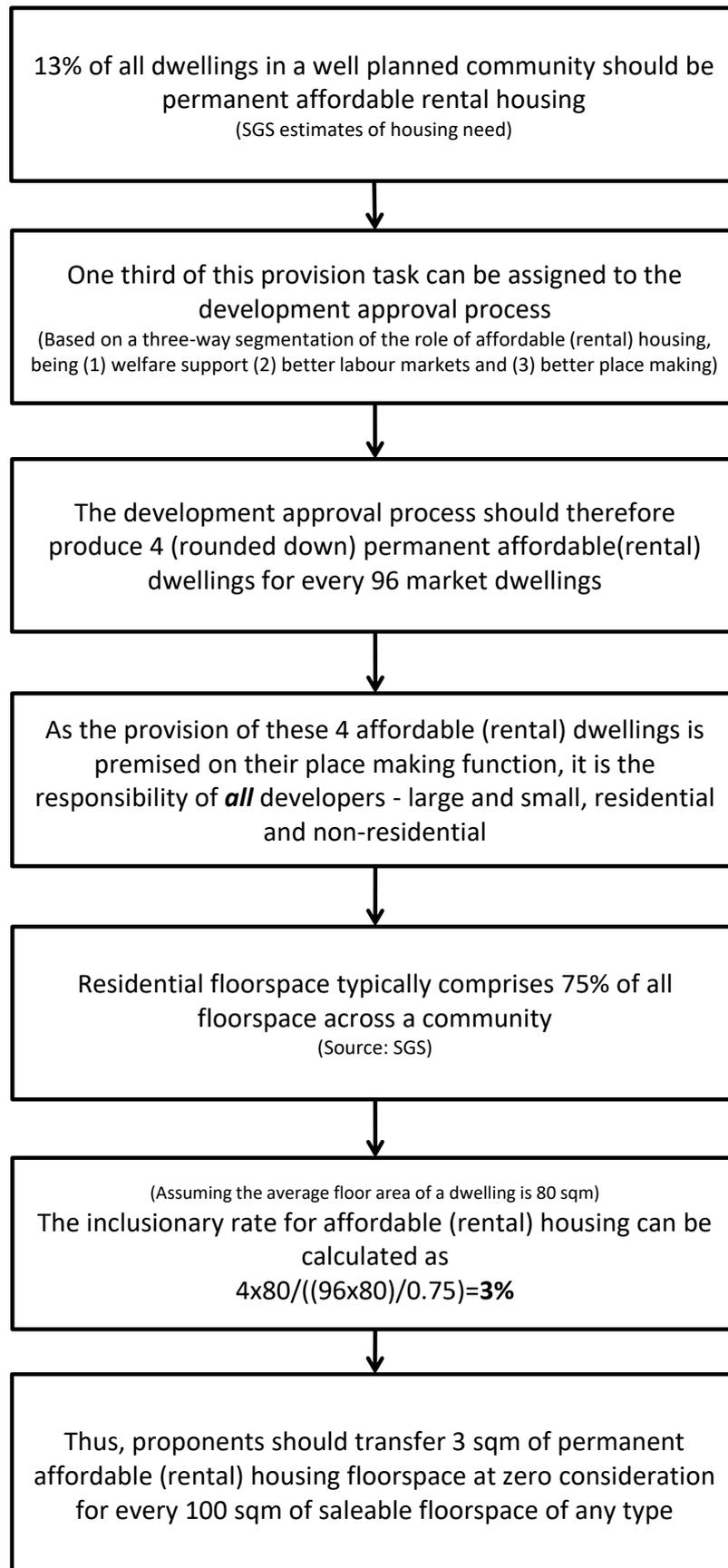
38. Across the metropolis as a whole, residential floorspace accounts for roughly 75% of all floorspace. For convenience, I have assumed that the same ratio would hold across the whole Fishermans Bend Precinct.
39. Based on the share of the need for affordable housing infrastructure which can reasonably be expected to be funded via an inclusionary infrastructure requirement in the development assessment system, 4 affordable housing units should be generated for every 96 market dwellings.
40. If all market floorspace is to carry an obligation to fund 1/3rd of the affordable housing infrastructure required in Fishermans Bend, a general inclusionary requirement for affordable housing can be calculated as follows (assuming an average floorspace per market dwelling of 80 sqm and that residential land use accounts for 75% of all floorspace):

$$4 \times 80 / ((96 \times 80) / 0.75) = 3\%$$

That is, the quantum of affordable housing to be provided by a proponent should be the equivalent of 3% of all market floorspace in the development.

41. On this basis, proponents would transfer 3 sqm of permanent social and affordable housing floorspace at zero consideration for every 100 sqm of saleable floorspace of any type.
42. In my opinion, this should be the benchmark value for any 'solution' offered by the proponent at 118 Bertie Street to meet the 6% affordable housing target.
43. That is, they should transfer dwellings at zero consideration in a number equivalent to 3 sqm for every 100 sqm of market floorspace or provide an alternative solution with the same or better financial value in present value terms.
44. Thus, where Clause 22.15-4.3 in the Scheme states that *"Development should provide at least six per cent of dwellings permitted under the dwelling density requirements in the Capital City Zone (excluding any Social housing uplift dwellings) unless as Affordable housing, unless"* ... (amongst two other points – see text box above) ... *"It can be demonstrated that the development will contribute to the Affordable housing objectives of this policy while providing less than the minimum amount"*, it would be acceptable, in my opinion, for the proponent to offer to transfer dwellings with a combined floor area equivalent to 3% of all marketable floorspace (residential and non-residential) in the building – to a Housing Association or other registered provider at zero consideration.
45. It would also be acceptable for the proponent to offer to transfer more dwellings at a discounted price rather than at zero consideration provided the present value of the affordable housing benefit (estimated using the method I outline at paragraphs 21 – 24 inclusive) is the same as that given by transferring dwellings with a combined floor area equivalent to 3% of all marketable floorspace in the building at zero consideration.
46. The logic underpinning the transfer of dwellings with a combined floor area equivalent to 3% of all marketable floorspace in the building at zero consideration as the benchmark for judging the acceptability or otherwise of affordable housing packages put forward by proponents in response to the 6% target in the Planning Scheme is summarised in Figure 1 below.

FIGURE 1 DERIVATION OF BENCHMARK VALUE FOR INCLUSION OF AFFORDABLE (RENTAL) HOUSING



2.4 Assessment of the draft Incorporated Document

47. I have reproduced in the text box below the affordable housing provisions of the version of the Am C172 Incorporated Document circulated to me on Jan 28, 2020.

Affordable Housing

- 1.1. Before the development starts, excluding demolition, bulk excavation, piling, site preparation works, and remediation works, the owner must enter into an agreement under section 173 of the *Planning and Environment Act 1987*, to the satisfaction of the Responsible Authority, for the delivery of affordable housing (as defined in the *Planning and Environment Act 1987*).
- 1.2. The agreement must:
 - a) Provide for the delivery of 6 percent of the total number of dwellings, for affordable housing as defined by Section 3AA of the *Planning and Environment Act 1987*, before the development is occupied.
 - b) Unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing:
 - i) Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority; or
 - ii) Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 20 years.
 - c) Require the affordable housing to be delivered:
 - i) Within the development; and
 - ii) In the form of one or two or three bedroom dwellings with one or more bicycle parking space allocated per dwelling.
 - d) Provide that in lieu of delivering all or part of the affordable housing in accordance with within Clause 1.2(a), (b) and (c), the Responsible Authority may agree to payment of an amount of money to a registered housing agency (or other housing provider or trust) if the Responsible Authority is satisfied that:
 - i) The owner has made best endeavours to secure a registered housing agency recipient (or other housing provider or trust) for the affordable housing and has not been successful; and
 - ii) The payment amount is equivalent to the value of the affordable housing that would otherwise have to be delivered less the value of any affordable housing provided within the development).
- 1.3. Provide that where the affordable housing is to be delivered using only the mechanism in Clause 1.2b)i) the Responsible Authority may accept a lesser percentage of affordable housing in satisfaction of Clause 1.2a) provided it is of equivalent value.
- 1.4. For the purpose of these provisions, 'value' means the monetary value of a dwelling offered for sale at a sufficient discount from market value as determined by an independent valuer (appointed by the President of the Australia Property Institute – Victorian Division) to meet the needs of households with income ranges specified within any Ministerial Order made under 3AB of the *Planning and Environment Act 1987* in force at the time of entry into the agreement.

48. These provisions are intended to implement Clause 22.15-4.3 of the Port Phillip Planning Scheme but do not contain sufficient guidance and criteria to facilitate negotiation of an appropriate affordable housing agreement. A key failing of the provisions is that they do not establish a benchmark \$ value for the affordable housing solution to be supplied by the proponent.

49. Clause 1.3 (of the ID affordable housing provisions) states that where the proponent wishes to transfer affordable housing dwellings rather than lease them, the "Responsible Authority may accept a lesser percentage of affordable housing in satisfaction of Clause 4.57a) provided it is of equivalent value". But, crucially, it does not state how this equivalent value is to be calculated.

50. The provisions can yield different values depending on the housing mix and which particular types of households are targetted within the income bands stated in the Act.
51. The provisions therefore lack certainty and clarity as to what is expected of the proponent.
52. Beyond this failing, I do not agree with draft provision to allow proponents to meet their affordable housing obligation by providing leased stock rather than transfer of title to registered providers. As stated, I interpret the 6% target as an inclusionary infrastructure requirement. The affordable housing infrastructure produced via this mechanism should be a permanent feature of the Precinct, not a time bounded one. By way of comparison, open space contributions, which are premised on similar planning grounds, are for provision of permanent rather than temporary parkland.

3. RECOMMENDATIONS

53. I recommend that the affordable housing provisions of the Incorporated Document be redrafted to:
1. Require the proponent to provide affordable housing by either:
 - a) Transferring dwellings at zero consideration to a Housing Association or other registered provider; and/or
 - b) Transferring dwellings at a discount to market price or on favourable financing terms to a Housing Association or other registered provider; and/or
 - c) Providing a cash or other asset transfer to a Housing Association or other registered provider where there is a legally enforceable arrangement for these assets to be deployed in the provision of an equivalent quantum of housing value elsewhere in Fishermans Bend.
 2. Require that were the proponent to offer option 1 (a) as its preferred affordable housing solution, the aggregate floorspace of housing transferred at zero consideration must be the equivalent of no less than 3% of all market floorspace in the development.
 3. Require that were the proponent to offer a solution comprising options 1 (b), 1 (c) or any combination of the three items listed above, the present \$ value of the affordable housing benefit must not be less than that given by option 1 (a)

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.

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, Maroondah and Maribyrnong Councils.

d) Other significant contributors to the report and where necessary outlining their expertise
None.

e) Instructions that define the scope of the report

My instructions in this matter were provided in writing by Maddocks (see Appendix B)

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

All these matters are detailed in my evidence statement.

g) 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.

h) 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.

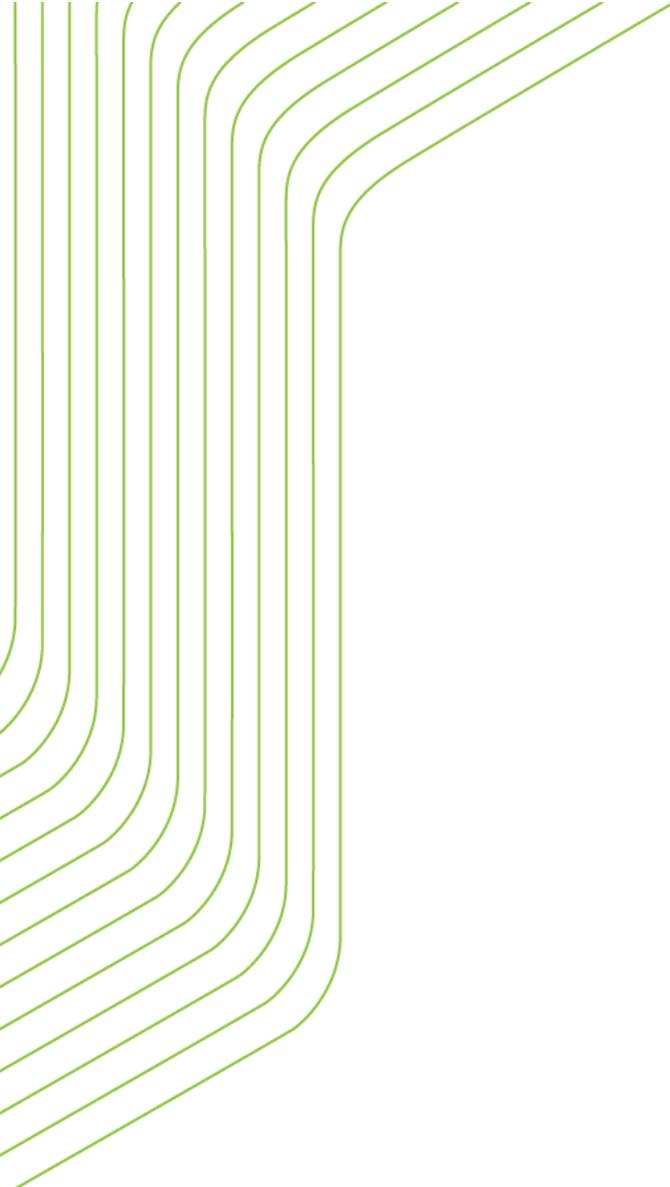
i) Questions falling outside the expert's expertise and also a statement indicating whether the report is incomplete or inaccurate in any respect

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 January 30, 2020



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