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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
TECHNOLOGY, ENGINEERING AND CONSTRUCTION LIST

NO: SCI 01796/2013

BETWEEN

GLENEIRA CITY COUNCIL
(ABN 65 952 882 314)

Plaintiff

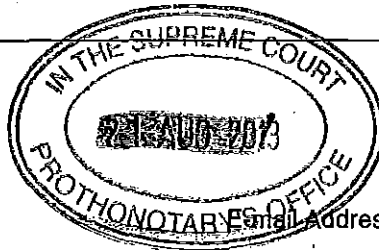
and

HANSEN YUNCKEN PTY LTD
(ABN 38 063 384 056)

Defendant

DEFENCE AND COUNTERCLAIM

Date of Document:
Filed on behalf of:
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24 August 2013
The Defendant

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DEFENCE

To the Statement of Claim of the Plaintiff (Council or GECC) dated 10 April 2013, the Defendant (Hansen Yuncken or HY):

THE PARTIES

1. Admits paragraph 1.
2. Admits paragraph 2.

THE CONTRACT

3. Admits paragraph 3, with the Glen Elra Sports and Aquatic Centre referred to as the "Project" in this Defence and Counterclaim.

4. Admits that the terms set out in Schedule 1 were express terms of the Contract¹ as pleaded in paragraph 4 and otherwise says that it will rely on the Contract at trial for its full terms and effect.

LIQUIDATED DAMAGES

5. Admits paragraph 5.
6. Denies paragraph 6 and says that on account of the Hansen Yuncken delay claims and entitlements arising out of the Delay Events (as defined and set out at paragraphs 43 to 47 of and Schedule E to this Defence and Counterclaim) the Dates of Practical Completion for each Separable Portion were not as pleaded by the Council.

PARTICULARS

Hansen Yuncken refers to and relies on the matters pleaded in paragraphs 43 to 47 of and Schedule E to this Defence and Counterclaim and says that particulars of the adjusted dates by which Hansen Yuncken says it was required to bring the Works the subject of the various Separable Portions to Practical Completion will be provided prior to trial.

7. Denies paragraph 7 and says that the Dates of Practical Completion for each Separable Portion were as follows (with the Council's alleged date and number of days' difference also shown):

SEPARABLE PORTION	DATE OF PRACTICAL COMPLETION	COUNCIL DATE	DIFFERENCE
SP1 (Southern Car Park (Zone 2))	27 May 2010	27 May 2010	0
SP2 (Central Car Park (Zone 3))	20 March 2012	21 March 2012	1
SP3 (East Boundary Road (including signalisation of entry) (Zone 6))	18 May 2011	21 May 2011	3
New SP4A	20 March 2012	A new Separable Portion was not agreed by the Council or determined by the Superintendent, with the relevant part of the Works said by them to fall within SP4, which achieved Practical Completion on 2 May 2012	44
SP4 (Balance of Works)	2 May 2012	2 May 2012	0
TOTAL DAYS			48

¹ As set out in the contract entered into between Hansen Yuncken and the Council on or about 9 December 2009 and with the meaning of all capitalised terms in this Defence and Counterclaim being as defined in the Contract, unless otherwise indicated or the context otherwise requires.

PARTICULARS AS TO SP4A

- 7.1. Clause 35.4 of the Contract provides as follows:

"If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of Separable Portions, the Superintendent may determine that the respective parts shall be Separable Portions.

In using the Separable Portion that has reached Practical Completion, the Principal shall not hinder the Contractor in the performance of the work under the Contract."

- 7.2. On or from 20 March 2012, following the issuing and provision of a Partial Occupancy Permit on that date, the Council took occupation of the following areas of the Works (some of which also formed part of Handover Access Areas under the Contract):

- 7.2.1. basement;
- 7.2.2. basketball stadium;
- 7.2.3. crèche;
- 7.2.4. administration (ground floor and level 1);
- 7.2.5. gymnasium;
- 7.2.6. program rooms 1, 2 and 3; and
- 7.2.7. mechanical plant,

(Early Occupation Areas).

- 7.3. By letter to the Council and the Superintendent dated 27 March 2012, Hansen Yuncken sought agreement from the Council or a determination from the Superintendent over the creation of a new Separable Portion (which it proposed be described as SP4A) in respect of the Early Occupation Areas, which agreement or determination was not provided.

- 7.4. Hansen Yuncken says that:

- 7.4.1. by reason of the issuing of the Partial Occupancy Permit and the Council's occupation of the Early Occupation Areas (during which the Council, among other things, moved permanent staff into the office/administration areas of the Project and conducted staff training in preparation for the opening of the Project), those areas had reached a stage equivalent of that of Practical Completion for the purpose of clause 35.4 of the Contract;
- 7.4.2. a new Separable Portion (SP4A) ought to have therefore been agreed by the Council or determined by the Superintendent in respect of the Early Occupation Areas; and

7.4.3. the Date of Practical Completion of SP4A was 20 March 2012, being the date on which the Early Occupation Areas were certified in the Partial Occupancy Permit as fit for occupation and the date on or from which the Council began to occupy them.

8. ~~Denies paragraph 8 and~~

8.1. repeats the matters pleaded in paragraph 6 above and says that on account of the Hansen Yuncken delay claims and entitlements arising out of the Delay Events, the Council has calculated its alleged liquidated damages entitlements by reference to incorrect Dates for Practical Completion;

8.2. repeats the matters pleaded in paragraph 7 above and says that the Council has ~~calculated its alleged liquidated damages entitlements by reference to incorrect Dates of Practical Completion, and~~

8.3. says that any entitlement of the Council to set-off, deduct and withhold liquidated damages under the Contract is subject to and must account for the Hansen Yuncken Variations, the Hansen Yuncken delay claims and entitlements arising out of the Delay Events, the Hansen Yuncken Delay Costs Claim (as respectively defined and set out at paragraphs 39 to 42, 43 to 47 and 48 to 49 below) and the other claims or adjustments that Hansen Yuncken has sought to bring to account in this Defence and Counterclaim.

9. Admits paragraph 9.

10. ~~Denies paragraph 10~~ and says that on account of the Hansen Yuncken delay claims and entitlements arising out of the Delay Events, the Dates for Handover Access for each Handover Access Area were not as pleaded by the Council:

PARTICULARS

Hansen Yuncken refers to and relies on the matters pleaded in paragraphs 43 to 47 of and Schedule E to this Defence and Counterclaim and says that particulars of the adjusted dates by which Hansen Yuncken says it was required to bring the Works the subject of the various Handover Access Areas to Handover Access Stage will be provided prior to trial.

11. Denies paragraph 11 and says that the Dates of Handover Access for each Handover Access Area were as follows (with the Council's alleged date and number of days' difference also shown):

HANDOVER ACCESS AREA	DATE OF HANDOVER ACCESS	COUNCIL DATE	DIFFERENCE
HAA1	6 October 2011	15 February 2012	133
HAA2	19 July 2011	16 February 2012	213
HAA3	2 April 2011	2 April 2011	0
HAA4	6 May 2011	19 May 2011	14
HAA5	20 June 2011	20 June 2011	0
HAA6	18 July 2011	11 November 2011	117
HAA7	13 December 2011	8 February 2012	58
TOTAL DAYS			545

12. ~~Denies paragraph 12 and:~~

12.1. repeats the matters pleaded in paragraph 6 above and says that ~~on account of the Hansen Yuncken delay claims and entitlements arising out of the Delay Events, the Council has calculated its alleged liquidated damages entitlements by reference to incorrect Dates for Handover Access;~~

12.2. repeats the matters pleaded in paragraph 11 above and says that the Council has calculated its alleged liquidated damages entitlements by reference to incorrect Dates of Handover Access; and

12.3. says that any entitlement of the Council to set-off, deduct and withhold liquidated damages under the Contract is subject to and ~~must account to the Hansen Yuncken Variation~~ ~~the Hansen Yuncken delay claims and entitlements arising out of the Delay Events, the Hansen Yuncken Delay Costs Claim and the other claims or adjustments that Hansen Yuncken has sought to bring to account in this Defence & Counterclaim.~~

BACKCHARGES

13. ~~Admits that in or about November 2009, it requested access to electricity and water utilities in the proximity of the softball pavilion as pleaded in paragraph 13, but otherwise does not admit paragraph 13 and says that:~~

13.1. the parties' agreements in respect of electricity, water and utilities (services) generally were set out in the Contract and in particular, clause 3.1A(b), which provides that the Contract Sum includes all costs and expenses relating to or arising from:

"the connection of services including water, sewerage, drainage, electricity and gas, including application for any permits and payment of fees and charges levied by relevant bodies for such connections and issuing of all necessary notices to such relevant bodies";

- 13.2. by clause 3.1A(b) of the Contract, Hansen Yuncken was required to pay for the connection of electricity, water and utilities (services) generally, but not their ongoing use as pleaded in paragraph 13 and elsewhere in the Statement of Claim; and
- 13.3. while it cannot properly plead to the November 2009 conversation referred to in paragraph 13 due to a lack of particulars about the specific date and time the conversation is alleged to have occurred, Hansen Yuncken does not admit that any conversation took place between Mr Gopalakrishnan and Mr Bolton in about November 2009 during which Hansen Yuncken agreed to pay for the ongoing use of utilities.
14. Admits paragraph 14 and says that the check meter in the proximity of the softball pavilion was installed in order to assist the Council to identify the respective extents to which power was being used by the users of the softball facilities and the Project site so that those softball facilities users who were required to pay for their utility use did not pay for utility usage by the Project site.
15. Admits that in or about November 2010, it requested access to electricity utilities in the proximity of the cricket pavilion as pleaded in paragraph 15, but otherwise does not admit paragraph 15 and:
- 15.1. repeats and relies on the matters pleaded in paragraphs 13.1 and 13.2 above; and
- 15.2. says that while it cannot properly plead to the November 2010 conversation referred to in paragraph 15 due to a lack of particulars about the specific date and time it is alleged to have occurred, Hansen Yuncken does not admit that any conversation took place between Mr Gopalakrishnan and Mr Dean in about November 2010 during which Hansen Yuncken agreed to pay for the ongoing use of utilities.
16. Admits paragraph 16 and says that the check meter in the proximity of the cricket pavilion was installed in order to assist the Council to identify the respective extents to which power was being used by the users of the cricket facilities and the Project site so that those cricket facilities users who were required to pay for their utility use did not pay for utility usage by the Project site.
17. ~~As to paragraph 17:~~
- 17.1. ~~does not admit that the Council incurred and has paid for utility charges in the amount of \$137,218.92 on account of Hansen Yuncken's utility usage as pleaded in paragraph 17 of and Schedule 2 to the Statement of Claim and otherwise cannot plead to the accuracy or reasonableness of the amounts claimed and said to have been incurred by the Council in respect of each of the components of its backcharges claim until after discovery is made by the Council and/or the Council provides particulars as to the make-up and quantification of the amounts claimed; and~~
- 17.2. ~~otherwise does not admit that it is liable to pay the Council \$137,218.92 on account of Hansen Yuncken's utility usage or any amount at all.~~
18. ~~Admits that it has not paid the utility charges as pleaded in paragraph 18, but otherwise does not admit that it was in breach of any agreement with the Council or that it is liable to pay the~~

Council \$137,218.92 on account of Hansen Yuncken's utility usage or any amount at all and repeats and relies on the matters pleaded in paragraphs 13 to 17 above.

19. ~~Denies paragraph 19 and:~~

- 19.1. repeats and relies on the matters pleaded in paragraphs 13.1 and 13.2 above; and
- 19.2. says that clause 29.1 of the Contract relates to the provision of Materials, Labour and Constructional Plant, not utilities as pleaded in paragraph 19.

COUNCIL VARIATIONS

20. As to paragraph 20 of and Schedule 3 to the Statement of Claim, Hansen Yuncken refers to and relies on Schedule A to this Defence and Counterclaim, which provides the following information in respect of the Council's variation claims in respect of "omitted works and reduced scope of works" and "works changed in character, materials or quality":

- 20.1. the item number referred to in Schedules 3 and 4 to the Statement of Claim;
- 20.2. the description referred to in Schedules 3 and 4 to the Statement of Claim;
- 20.3. the amount claimed by the Council; and
- 20.4. Hansen Yuncken's pleading in respect of the relevant claim.

Hansen Yuncken makes reference to "the Adjudication Determination" in Schedule A to this Defence and Counterclaim. This reference relates to an adjudication determination of Mr John McMullan delivered on 24 August 2012 in respect of a Hansen Yuncken payment claim delivered to the Council on 4 July 2012 under the *Building and Construction Industry Security of Payment Act 2002 (Vic) (SOP Act)*. Consequent upon the Adjudication Application:

- 20.5. the Council has brought to account by way of a set-off, deduction and withholding against amounts otherwise owing to Hansen Yuncken, certain claims the Council has pursued in the Statement of Claim (with those claims and amounts paid in respect of them identified in Schedule A to this Defence and Counterclaim);
- 20.6. the value of these claims must be taken into account in this proceeding by reason of section 47(3)(a) of the SOP Act; and
- 20.7. the value of these claims Hansen Yuncken seeks restitution of as part of its counterclaim in keeping with section 47(3)(b) of the SOP Act.

21. As to paragraph 21:

- 21.1. admits that the Superintendent purported to value the parts of the work under the Contract that were said to have been reduced in scope or omitted;
- 21.2. denies that the valuations by the Superintendent of the parts of the work under the Contract that were said to have been reduced in scope or omitted as set out in

Schedule 3 to the Statement of Claim were made in accordance with clause 40.5 of the Contract or otherwise in accordance with clause 40;

- 21.3. further or alternatively, refers to and relies on Schedule A to this Defence and Counterclaim; and
- 21.4. otherwise denies the allegations contained in that paragraph.
- 22. Denies paragraph 22 and repeats and relies on the matters pleaded in paragraph 21 above.
- 23. As to paragraph 23 of and Schedule 4 to the Statement of Claim, refers to and relies on Schedule A to this Defence and Counterclaim.
- 24. As to paragraph 24:
 - 24.1. admits that the Superintendent purported to value what were said to have been changes to the character, materials or quality of the work under the Contract;
 - 24.2. denies that the valuations by the Superintendent of what were said to have been the changes to the character, materials or quality of the work under the Contract as set out in Schedule 4 to the Statement of Claim were made in accordance with clause 40.5 of the Contract or otherwise in accordance with clause 40;
 - 24.3. further or alternatively, refers to and relies on Schedule A to this Defence and Counterclaim; and
 - 24.4. otherwise denies the allegations contained in that paragraph.
- 25. Denies paragraph 25 and repeats and relies on the matters pleaded in paragraph 24 above.

ALLEGED DEFECTIVE WORKS

- 26. As to paragraph 26 of and Schedule 5 to the Statement of Claim, Hansen Yuncken refers to and relies on Schedule B to this Defence and Counterclaim, which provides the following information:
 - 26.1. the room number referred to in Schedule 5 to the Statement of Claim;
 - 26.2. the item number referred to in Schedule 5 to the Statement of Claim;
 - 26.3. the description referred to in Schedule 5 to the Statement of Claim;
 - 26.4. Hansen Yuncken's pleading in respect of the item of alleged defective work as follows:

PLEADING	DESCRIPTION
Completed	Denied on the basis that remedial works have been completed. Hansen Yuncken acknowledged a responsibility to or, as an act of good faith, otherwise agreed to perform remedial work relevant to the defective work allegation, which work has been carried out and completed in accordance with applicable requirements and standards.

PLEADING	DESCRIPTION
Disputed	Denied on the basis that there was no defect. The work the subject of the defective work allegation was carried out and completed in accordance with applicable requirements and standards in the first instance.
Duplicate	Denied on the basis that the defective work allegation is a duplicate.
GECC	Not admitted. Further investigation by or Information from GECC has been requested and is otherwise required.
HY	Not admitted. Further Hansen Yuncken review or investigation is required and if necessary and applicable, Hansen Yuncken will perform remedial work relevant to the defective work allegation as part of its defect rectification obligations.
N/A	Denied on the basis that the defective work allegation is not applicable to Hansen Yuncken.
Not Admitted	The defective work allegation is not admitted and Hansen Yuncken will further plead to it after discovery and/or particulars are provided by the Council about the nature, basis and quantification of the Council's associated claim.

- 26.5. the third party or parties who performed the relevant work or are otherwise relevant to the defective work allegation, including a reference to "GECC" in respect of defective work allegations that involve design issues (which issue is addressed further in paragraph 29.2 below); and
- 26.6. any further Hansen Yuncken particulars in respect of the defective work allegations.
27. Admits that the Superintendent gave directions and notices to Hansen Yuncken in respect of "Rectification Work", but otherwise denies the matters pleaded in paragraph 27.
28. As to paragraph 28, refers to and relies on the matters pleaded in Schedule B to this Defence and Counterclaim.
29. As to paragraph 29:
- 29.1. refers to and relies on the matters pleaded in Schedule B to this Defence and Counterclaim in answer to the allegation in paragraph 29 that the Council suffered loss and damage as a consequence of the matters set out in paragraphs 26 to 28 of the Statement of Claim, but otherwise cannot plead to paragraph 29 until discovery is made by the Council and/or the Council provides particulars as to the alleged costs of rectification; and
- 29.2. further says that:
- 29.2.1. to the extent that this Honourable Court considers that Hansen Yuncken may be liable in damages to the Council in respect of the Council's claim regarding alleged defective work as set out in Schedule 5 to the Statement of Claim (which liability is denied), such claim is an "apportionable claim" within the meaning of section 24AE of the *Wrongs Act 1958* (Vic); and

- 29.2.2. the liability of Hansen Yuncken is consequently limited under sections 24AF and 24AI of the *Wrongs Act*:

PARTICULARS

- (a) as detailed in Schedule B to this Defence and Counterclaim, various work the subject of the allegations of defective work set out in Schedule 5 to the Statement of Claim was performed by subcontractors that Hansen Yuncken engaged to perform construction work and supply related goods and services in relation to and connected with the Project and the work under the Contract;
- (b) the Council engaged Hansen Yuncken as a construct-only contractor, such that design risk and responsibility related to and connected with the work under the Contract lay with the Council, who in turn engaged various design consultants to provide it design-related services in relation to and connected with the Project and the work under the Contract;
- (c) to the extent that any of the work under the Contract is defective, those defects were caused or substantially contributed to by acts or omissions of the various subcontractors engaged by Hansen Yuncken and/or the Council in respect of design-related defects (both directly and through the Council's design consultants), whereby those subcontractors and/or the Council and its design consultants failed to act as reasonable or prudent persons exercising care, skill and diligence in respect of the role or function they held in relation to and connected with the Project and the work under the Contract:

PARTICULARS

particulars of the alleged defective work for which Hansen Yuncken's subcontractors and/or the Council (including through its design consultants) are responsible are provided at Schedule B to this Defence and Counterclaim; and

- (d) the Hansen Yuncken subcontractors named in Schedule B to this Defence and Counterclaim and the Council (both directly and through its design consultants) are "concurrent wrongdoers" within the meaning of section 24AH of the *Wrongs Act*.

ADDITIONAL CONSULTANTS FEES

- 30. As to paragraph 30, Hansen Yuncken admits that certain reporting on the 25 metre pool, which formed part of the work under the Contract, was performed by Ancon Beton Pty Ltd and Mantric Architecture as pleaded in paragraph 30, but otherwise denies that paragraph.
- 31. ~~Does not admit paragraph 31~~ and says that it cannot plead further to it until discovery is made by the Council and/or particulars are provided by the Council as to which of the

pleaded tests are said to have demonstrated the matters pleaded in paragraphs 31(a) to 31(b)(vii).

32. Does not admit that the Council incurred fees in the amount of \$91,319.00 in respect of testing and consultants' advice in respect of the 25 metre pool as pleaded in paragraph 32 of and Schedule 6 to the Statement of Claim and otherwise cannot plead to the accuracy or reasonableness of the amounts claimed and said to have been incurred by the Council in respect of each of the components of its additional consultants' fees claim until after discovery is made by the Council and/or particulars are provided by the Council as to the make-up and quantification of the amounts claimed.

33. Denies paragraph 33 and says that contrary to the provisions of clause 31.7(a) of the Contract in respect of the circumstances in which costs of and incidental to testing are to be borne by the Contractor:

33.1. the Contract did not provide that Hansen Yuncken shall bear those costs in the circumstances pleaded in paragraph 30 of the Statement of Claim; and

33.2. the pleaded tests were not ones that Hansen Yuncken was required to conduct "other than pursuant to a direction under clause 31.1" of the Contract, with the Council specifically pleading at paragraph 33 that they were directed by the Superintendent in accordance with clause 31.1.

DAMAGES

34. Denies paragraph 34 and:

34.1. repeats and relies on the matters pleaded in paragraphs 5 to 25 and 30 to 33 above;

34.2. says that to the extent to which it is not (with relevant particulars not provided in the Statement of Claim), the Council's calculation of the "Final Contract Amount (value of works done)" in the table appearing at paragraph 34 ought to include calculations of the value of the civil zone remeasure areas of the Works (Zones 2, 3 and 6) and adjusted provisional sum items as set out below:

PARTICULARS

Civil Zone Remeasure

34.2.1. on the basis of the matters set out in Schedule C to this Defence and Counterclaim, which provides details of a remeasure to the relevant areas of the Works conducted on behalf of Hansen Yuncken, Hansen Yuncken says that the value of the Works carried out in Zones 2, 3 and 6 is \$2,040,283.95;

Adjusted Provisional Sum Items

34.2.2. the value of the adjusted provisional sum items under the Contract is \$62,700.00, made up as follows:

DESCRIPTION	AMOUNT
Provisional Sum Item 29/1B – Sunshade Structures	\$25,520.00
Provisional Sum Item 29/1C – Fibreglass Ceiling and Associated Roof Edge	\$6,820.00
Provisional Sum Item 29/1D – External Signage Feature	\$30,360.00
TOTAL	\$62,700.00

34.3. says that it will provide particulars of Hansen Yuncken's account of the accounting position between it and the Council under and connected with the Contract prior to trial in keeping with the matters pleaded in paragraphs 7, 11, 20 and 34.2 above and 42, 47 and 49 below.

35. Denies paragraph 35 and repeats and relies on the matters pleaded in paragraphs 26 to 29 above.

COUNCIL'S PRAYER FOR RELIEF AND OTHER MATTERS

36. On the basis of the matters pleaded in paragraphs 1 to 35 above, denies that the Council is entitled to the relief claimed or any relief at all.

37. In further answer to the Statement of Claim, Hansen Yuncken says that it will seek to set-off so much of its counterclaim as will satisfy or extinguish the Council's claim.

COUNTERCLAIM

Hansen Yuncken repeats the matters pleaded in paragraphs 1 to 37 above and says:

38. Hansen Yuncken counterclaims against the Council/Defendant by Counterclaim (together, Council or GECC) on the basis set out below.

VARIATIONS

39. Throughout Hansen Yuncken's performance of the work under the Contract, variations to the Works were directed by the Superintendent, the Superintendent's Representative and others acting on behalf of the Superintendent, the Superintendent's Representative and/or the Council. Relevantly, these variations related to, for the purpose of clause 40.1 of the Contract:

- 39.1. an increase in any part of the work under the Contract;
- 39.2. a change in the character or quality of any material or work;
- 39.3. a change to the levels, lines, positions or dimensions of any part of the work under the Contract;

- 39.4. the execution of additional work; and/or
- 39.5. the demolition or removal of work no longer required by the Principal.
40. ~~Hansen Yuncken is entitled to be paid \$3,001,019.60 on account of variations to the work under the Contract on the basis of the matters set out in Schedule D to this Defence and Counterclaim (Hansen Yuncken Variations), which Schedule provides the following information (as the context requires):~~
- 40.1. in respect of positive variations (that is, not those omitting work) that have been approved by or on behalf of the Council (at Part A of Schedule D);
 - 40.2. in respect of variations that have been approved by or on behalf of the Council, but the amount approved is disputed by Hansen Yuncken (at Part B);
 - 40.3. in respect of variations that have been rejected by or on behalf of the Council (at Part C); and
 - 40.4. in respect of variations that remain unassessed by or on behalf of the Council (at Part D):
 - 40.4.1. the variation reference;
 - 40.4.2. a reference to Site Instruction(s) through which the variation was directed (if any);
 - 40.4.3. the description of the variation (consistent with the descriptions used by the parties in project records);
 - 40.4.4. the amount claimed;
 - 40.4.5. the amount approved (if any);
 - 40.4.6. the difference between the amount claimed and the amount approved; and
 - 40.4.7. any further Hansen Yuncken particulars in respect of the variation.
41. Further to Hansen Yuncken's entitlements pursuant to clause 40 of the Contract, Hansen Yuncken says it is entitled to be paid for the Hansen Yuncken Variations pursuant to an implied agreement to pay by the Council, which agreement arose on account of the following:
- 41.1. ~~the work the subject of the Hansen Yuncken Variations was carried out and completed by Hansen Yuncken pursuant to a direction or instruction given by or on behalf of the Council;~~
 - 41.2. the Council knew that the relevant work was being performed by Hansen Yuncken at the time the work was being performed;
 - 41.3. the Council knew that the relevant work was outside of the work specified in the Contract; and

- 41.4. the Council knew that Hansen Yuncken expected to be paid for the relevant work as variations to the Contract.
42. ~~The Council has failed to pay Hansen Yuncken the \$3,001,019.60 that Hansen Yuncken is entitled to in respect of the Hansen Yuncken Variations on account of the following:~~
- 42.1. the Council's rejection or part-approval of variations forming part of the Hansen Yuncken Variations; and
- 42.2. the Council exercising its alleged rights to set-off, deduct and withhold against amounts otherwise owing to Hansen Yuncken on account of the Council's claims to liquidated damages, backcharges and variations:

PARTICULARS

As pleaded in paragraph 34.3 above, the value of the Hansen Yuncken Variations will be brought to account in context of Hansen Yuncken's calculation of the accounting position between it and the Council under and connected with the Contract prior to trial.

EOTs

43. Pursuant to clause 35.5 of the Contract, Hansen Yuncken was and is entitled to an extension of time (EOT) to the date by which it was required to bring the Works the subject of the various Handover Access Areas and Separable Portions to Handover Access Stage and Practical Completion respectively.
44. Further to his specific authority to do so by reference to other subclauses of clause 35.5, clause 35.5(i) of the Contract gave the Superintendent general authority to grant EOTs by providing as follows:

"The Superintendent may at any time and from time to time before the issue of a Final Certificate by notice in writing to the Contractor extend a Project Milestone Date, Handover Access Stage or the time for Practical Completion for any reason in the Superintendent's absolute discretion and without being under any obligations to do so for the benefit of the Contractor."

45. Relevant to the Superintendent's authority set out in clause 35.5(i) of the Contract, clause 23(a) of the Contract provides as follows:

"The Principal shall ensure that at all times there is a Superintendent and that in the exercise of the functions of the Superintendent under the Contract, the Superintendent:

- (i) acts honestly and fairly;*
- (ii) acts within the time prescribed by the Contract or where no time is prescribed, within a reasonable time; and*
- (iii) arrives at a reasonable measure or value of work, quantities or time."*

46. "Qualifying Cause of Delay" is defined at clause 2 of the Contract as follows:

"Qualifying Cause of Delay" means:

- (a) *any act of the Principal or the Superintendent that is not authorised by the Contract;*
- (b) *any default or omission of the Superintendent, the Principal or its consultants or agents;*
- (c) *a variation under clause 40;*
- (d) *any statewide or nationwide industrial relations dispute except where such industrial relations dispute is directly connected to the Contractor in undertaking its usual business or is specific to the Site;*
- (e) *fire, flood, earthquake or any other physical natural disaster,*

and that event causes a delay to the work under the Contract which prevents the Contractor from achieving a Project Milestone by the relevant Project Milestone Date or a Handover Access Stage by the Date for Handover Access or from achieving Practical Completion by the Date for Practical Completion."

47. ~~Hansen Yuncken is entitled to EOTs pursuant to clause 35.5 generally and otherwise under clause 35.5(i) specifically (in connection with clause 23(a)) to the extent that it was prevented from achieving a Project Milestone by the relevant Project Milestone Date or a Handover Access Stage by the Date for Handover Access or from achieving Practical Completion by the Date for Practical Completion by those delay events set out at Schedule E to this Defence and Counterclaim (the Delay Events).~~ Schedule E to this Defence and Counterclaim provides the following information in respect of relevant delay events:

- 47.1. an item number;
- 47.2. a document reference; and
- 47.3. a description of the relevant Delay Event:

PARTICULARS

Particulars of the duration of the delays caused by the Delay Events, the effect of those delays on Hansen Yuncken's ability to achieve a Project Milestone by the relevant Project Milestone Date, a Handover Access Stage by the Date for Handover Access or Practical Completion by the Date for Practical Completion and the associated Hansen Yuncken EOT claims and entitlements will be provided prior to trial.

DELAY OR DISRUPTION COSTS

48. Pursuant to clause 36 of the Contract (and otherwise at law), Hansen Yuncken was and is entitled to payment for the extra costs it incurred on account of delays in respect of which it is entitled to EOTs, with clause 36(b) of the Contract providing as follows in respect of the basis on which the Superintendent is to calculate the extra costs payable to Hansen Yuncken:

"(b) The Principal shall pay to the Contractor such extra costs as calculated by the Superintendent as follows:

- (i) for an event referred to in paragraph (c) of the definition of Qualifying Cause of Delay [a variation under clause 40] in accordance with clause 40.5; and
- (ii) for the events referred to in clause 36(a) other than an event referred to in paragraph (c) of the definition of Qualifying Cause of Delay, the extra costs necessarily incurred by the Contractor by reason of the delay provided always that the Contractor has taken all appropriate steps or actions to mitigate the quantum of such delay costs."

49. ~~Hansen Yuncken has incurred extra costs on account of the delays caused by the Delay Events.~~

~~PARTICULARS~~

~~Particulars of the extra costs incurred by Hansen Yuncken will be provided prior to trial.~~

AND THE DEFENDANT/PLAINTIFF BY COUNTERCLAIM CLAIMS:

A. ~~Damages~~

B. ~~Interest~~

C. ~~Costs.~~

Dated: 21 August 2013

Signed: s/ Michael Thomas

Crawford Legal

Solicitors for the Defendant

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SCHEDULE A – COUNCIL VARIATIONS

A VARIATIONS – OMITTED WORKS AND REDUCED SCOPE OF WORKS

NO.	DESCRIPTION	AMOUNT	HY PLEADING
15	Booster Gas Supply – credit for removal	\$5,259.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 148 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice. 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
20	Early Works part 1 – establishment of services (comm, elec, water, gas) softball pavilion adjacent to the GESAC North East Boundary running from Gardeners Road	\$55,432.00	<ol style="list-style-type: none"> 1. Hansen Yuncken denies this claim and says that it established its own services at the Site and that "early works" were otherwise not part of its scope of work. 2. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has already been paid to the Council or otherwise deducted from Hansen Yuncken. 3. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
22	Lockers – removal of lockers and seating to first floor male and female change rooms	\$38,193.39	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 245 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination in the amount of \$43,788.60 and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice (and in excess of the claimed amount). 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.

NO.	DESCRIPTION	AMOUNT	HY PLEADING
23	Insulation to concrete (mechanical) plenum duct	\$1,648.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 115 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice. 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
24	Smoke detectors – locations within supply air ductworks (HY incorrectly claimed for two additional smoke detectors which were not installed)	\$767.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 100A and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice. 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
28	Girt spacings – reduction in steel	\$751.43	<ol style="list-style-type: none"> 1. Hansen Yuncken does not admit this claim. 2. Hansen Yuncken cannot further plead to this claim until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim. 3. Hansen Yuncken otherwise says that this claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken.
31	Insulation not installed	\$5,603.94	<p>Hansen Yuncken denies this claim and says that:</p> <ol style="list-style-type: none"> (a) as is evident through GCOR 4779 sent by Hansen Yuncken to the Council on 22 October 2011, to which no response was received, Hansen Yuncken incurred the costs of installing what it understands to be insulation relevant to this claim in accordance with the Council's specification for the Works, only to have to remove it when the Council's consultant, CSR, recommended that removal; and (b) notwithstanding the fact that Hansen Yuncken incurred these costs, it accounted for this item under the Contract through CV 298, which reflected the redesign of ceilings above the pools, and was applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment and having already been provided for as a deduction in the calculation of amounts claimed by Hansen Yuncken, cannot be re-claimed by the Council.

NO.	DESCRIPTION	AMOUNT	HY PLEADING
32	Removal of two concourse drainage pits	\$3,070.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 05 – a variation occasioned by a third party remeasure of hydraulic works – and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment.
33	Reveal surround in ceiling – by AA 1169 dated 14 July 2011, the reveal height was reduced from 45mm to 10mm	\$6,374.90	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
35	Precast panel embedments (cast-in exposed steelwork not galvanised) part 1	\$8,870.18	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
39	Tanking membrane to retaining walls – HY failed to install a tanking membrane to the retaining walls around the perimeter of the 50m pool as required by the Contract Specifications	\$14,575.54	Hansen Yuncken denies this claim and says that it tanked all membranes in accordance with the relevant specifications/drawings.
40	Planter box and associated works not installed	\$13,326.40	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and says that the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken.
45	Tanking Membrane to Stadium Wall (South) not installed	\$707.81	Hansen Yuncken does not admit this claim and says that it cannot properly plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
47	Supply of Starting Block Anchors by GECC – the concrete seat adjacent to the stadium wall was removed	\$5,335.00	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and will account for the amount claimed by the Council in the calculation of Hansen Yuncken's counterclaim.
52	Wellness Suite Wall not provided	\$5,229.43	Hansen Yuncken denies this claim and says that the relevant works were completed in accordance with the relevant specifications/drawings.
53	Reduced Structural Steel (Mass) in Pool Hall Slab	\$2,647.33	Hansen Yuncken denies this claim and says that it in fact exceeded the specified structural steel mass in the Pool Hall slab.

NO.	DESCRIPTION	AMOUNT	HY PLEADING
54	Reduced Stud Sizes And Increased Spacings - Dry Walls W40/50/60 – wall studs not provided	\$36,235.93	<ol style="list-style-type: none"> 1. Hansen Yuncken denies this claim and says that it completed the relevant works in accordance with the relevant specifications/drawings. 2. Hansen Yuncken further says that the Council's engineer did not notice or raise any concern about this issue during his inspection of the dry walls prior to installation of the stud walls and that had he done so, any issue could have been addressed at that time.
55	Supply of DVRs – DVRs not provided	\$12,375.00	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but does not admit the amount claimed and cannot further plead to that until discovery and/or particulars are provided by the Council as to the calculation of that amount.
61	Irrigation rain sensor not delivered to GECC as per SI 4479	\$345.00	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and will account for the amount claimed by the Council in the calculation of Hansen Yuncken's counterclaim.
64	Perimeter Fence Detection System not provided	\$9,000.00	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and will account for the amount claimed by the Council in the calculation of Hansen Yuncken's counterclaim.
65	Landscaping Works (undertaken by Council's contractor for Zone 3 and 4 as a result of HY's failure to meet the Council's timelines for completion of these works)	\$9,019.55	Hansen Yuncken does not admit this claim and says that it cannot properly plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
66	Landscaping works completed by Council's contractor for the East Bentleigh preschool garden beds as a result of HY's failure to meet the Council's timelines for completion of these works	\$2,680.00	Hansen Yuncken does not admit this claim and says that it cannot properly plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
67	Electrical cabling rectification carried out by Council's contractor for the disabled bench in the assisted change room on ground floor as a result of HY's failure to meet the Council's timeline for completion of these works	\$431.50	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and will account for it in the calculation of its counterclaim.
68	Turf laid adjacent to the softball oval by Council's contractor as a result of HY's failure to meet the Council's timelines for completion of these works	\$325.00	Hansen Yuncken does not admit this claim.
69	Balance Bar Set out – reduction in scope	\$1,284.25	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 268 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment.

NO.	DESCRIPTION	AMOUNT	HY PLEADING
70	External waterslide column pad footings reduced in size and quantity between tender to final as-built	\$60,241.15	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
71	Wall timber panelling – Contractor instructed to delete timber panelling from FL Office internal wall and add to bulkhead. Contractor has reduced installation in other areas without instruction	\$1,250.52	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
75	Gutter guards not installed	\$29,664.83	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and will account for the amount claimed by the Council in the calculation of Hansen Yuncken's counterclaim.
76	Structural Steelwork – reduced protective coating system – hot dipped galvanising	\$63,600.59	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work, but does not admit the amount claimed and cannot plead to that until discovery and/or particulars are provided by the Council as to the calculation of that amount.
77	Core-filled blockwork walls – reduction in scope	\$5,534.25	Hansen Yuncken denies this claim and says that the relevant works were completed as initially specified or otherwise on the basis that there would be no price adjustment.
78	Defective turf – reinstatement to drainage trench in front of softball pavilion	\$2,845.00	Hansen Yuncken denies this claim and says that the relevant works were completed as initially specified.
79	Irrigation pipework not installed to EB road	\$7,990.00	Hansen Yuncken denies this claim and says that the relevant works were completed as initially specified or otherwise on the basis that there would be no price adjustment.
80	Stadium lightbox – reduction in scope	\$511.13	Hansen Yuncken denies this claim and says that the relevant works were completed as initially specified or otherwise on the basis that there would be no price adjustment.
81	Landscaping – reduced quantities	\$3,085.16	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
82	Access paths to plant (roof) not installed	\$5,110.45	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
83	Backfill to south and west side of basement not installed	\$8,741.07	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.

NO.	DESCRIPTION	AMOUNT	HY PLEADING
84	Bi-locks – reduction in scope	\$4,758.75	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
89	Dilapidation surveys not undertaken	\$1,350.00	Hansen Yuncken denies this claim and says that the relevant works were undertaken.
91	Access ladder to bubble roof not installed	\$1,554.95	Hansen Yuncken denies this claim and says that the relevant access ladder was not part of the initial scope of works under the Contract. Hansen Yuncken made a variation claim (refer CV 327) following an instruction to install the access ladder, which variation claim was not approved, such that the position remained that the ladder was not required to be installed.
92	Air tight plenum to rear of gym store – reduction in scope	\$225.24	Hansen Yuncken does not admit this claim.
93	No IOS to main plenum AG drain	\$1,157.40	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
94	Security pole / camera to north side of softball & to 50mm mound / crèche wall and fence	\$3,114.97	Hansen Yuncken denies this claim and says that the relevant works were completed as initially specified or otherwise on the basis that there would be no price adjustment.
95	Reduced extent of hob to first floor plant room	\$1,267.25	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
96	Terrace pergola not installed	\$3,106.11	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
97	Sliding door to pool hall – reduced scope	\$636.13	Hansen Yuncken admits that an omission or reduction to the Works occurred in respect of this work and will account for the amount claimed by the Council in the calculation of Hansen Yuncken's counterclaim.
99	Downpipe not installed – Grid D12 on L1	\$1,815.00	Hansen Yuncken denies this claim and says that the relevant works are the subject of a variation in respect of which Hansen Yuncken is entitled to additional payment (refer CV141).
100	FT4 steel framing length reduction	\$2,776.11	Hansen Yuncken denies this claim and says that the relevant works were completed in excess of initial specifications, in respect of which work Hansen Yuncken is entitled to additional payment as part of its variation claims concerning structural steel changes.

B. VARIATIONS – WORKS CHANGED IN CHARACTER, MATERIALS OR QUALITY

NO.	DESCRIPTION	AMOUNT	HY PLEADING
14	Lift services – credit for HY's proposed removal of Architectural finishes as per RFI 79 dated 11 March 2010	\$10,000.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that a change in character, materials or quality to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 10 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice. 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
16	Glass type change – material substitution	\$18,000.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that a change in character, materials or quality to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 157 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice. 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
27	Saving from alternative supplier (louvers and sunscreens)	\$10,000.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that a change in character, materials or quality to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 44 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment. 3. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken, twice. 4. This payment must be taken into account in this action by reason of section 47(3)(a) of the SOP Act and Hansen Yuncken seeks restitution of the value of this claim from the Council pursuant to clause 47.3(b) of the SOP Act.
29	Precast panel colour treatment – HY was required to supply and install building perimeter precast panels with a colour oxide pigment. For the convenience of HY, the precast concrete panels with full colour through the mix was changed to a surface painted finish	\$83,015.92	Hansen Yuncken denies this claim and says that it completed its work to the precast colour panels in accordance with an accepted alternative specification, which, by agreement, was not to result in a price adjustment.

NO	DESCRIPTION	AMOUNT	HY PLEADING
30	Material substitution – zinc cladding to plasterboard, CD04 change to PA01 from top of window to floor level in Main Entry	\$13,736.32	<ol style="list-style-type: none"> 1. Hansen Yuncken denies this claim and says that it completed this work in accordance with an accepted alternative specification, which, by agreement, was not to result in a price adjustment (refer CV 131). 2. Notwithstanding this, the claim was allowed in the Adjudication Determination and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken.
34	Hot Water Service TMVs – removed from scope	\$9,270.35	<ol style="list-style-type: none"> 1. Hansen Yuncken denies this claim and says that the relevant works were completed in excess of initial specifications, in respect of which work Hansen Yuncken is entitled to additional payment (refer CV 126). 2. Notwithstanding this, the claim was allowed in the Adjudication Determination at \$29,938.95 and as such, has been paid to the Council or otherwise deducted from Hansen Yuncken in excess of the claimed amount.
38	AWL excess container hire and travel expenses – resulting from HY's change in construction methodology from a single visit to staged installation of waterslides	\$5,825.33	Hansen Yuncken denies this claim and says that the Council was responsible for any cost overruns of its own contractors (of which AWL was one) and that otherwise, the Council's claim is in the nature of a delay claim which is incorporated into the Council's claim for liquidated damages (which claim is denied).
42	Aluminium Surrounds in linear diffuser shafts in plenum – the Contract failed to construct the cast in epoxy coated aluminium surrounded within the mechanical air plenum	\$47,600.00	Hansen Yuncken denies this claim and says that it completed this work in accordance with an accepted alternative specification, which, by agreement, was not to result in a price adjustment.
44	Extensio Ceiling Modifications	\$21,300.00	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that a change in character, materials or quality to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 251 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment.
46	Retaining wall shortened in length	\$12,051.36	Hansen Yuncken denies this claim and says that the relevant works were completed in excess of initial specifications, in respect of which work Hansen Yuncken is entitled to additional payment (refer CV77D).
72	External cladding, change in material as installed by the Contractor – the north external building facia was documented as being clad in zinc panelling but was substituted with painted cement fibre sheet	\$4,129.87	Hansen Yuncken does not admit this claim and says that it cannot further plead to it until discovery and/or particulars are provided by the Council as to the nature and basis of this claim, including as to the exact location (if applicable, by drawing reference), amount and cost of the item(s) of work the subject of the claim.
73	Spa glazing – design change from Planar type skylight to framed toughened glass	\$11,779.44	Hansen Yuncken denies this claim and says that the relevant works were completed in excess of initial specifications, in respect of which work Hansen Yuncken is entitled to additional payment (refer CV 77D).

NO	DESCRIPTION	AMOUNT	HY PLEADING
74	Alternative chiller unit proposed by the Contractor, Dalkia chiller in lieu of Powerpax	\$8,788.18	<ol style="list-style-type: none"> 1. Hansen Yuncken admits that a change in character, materials or quality to the Works occurred in respect of this work, but denies that the Council is entitled to (further) payment in respect of it. 2. The claim was accounted for under the Contract through CV 68 and applied by Hansen Yuncken as a deduction from the Contract Sum in the calculation of Hansen Yuncken's claims for payment.
90	HDPE Ducts substituted with SS ducts as proposed by the Contractor	\$TBA	Hansen Yuncken does not admit this claim and will plead to it when the particulars foreshadowed by the Council in Schedule 4 to the Statement of Claim are provided.
98	Pool hall glazing – change in glazing type as per CV67	\$65,560.00	Hansen Yuncken denies this claim and says that the relevant works were completed in excess of initial specifications, in respect of which work Hansen Yuncken is entitled to additional payment (refer CV 67).

SCHEDULE B – ALLEGED DEFECTIVE WORKS

As pleaded at paragraph 26 of this Defence and Counterclaim, the Hansen Yuncken pleading in respect of each item of alleged defective work shown in the "HY Response" column in the table below, is categorised as follows:

RESPONSE	DESCRIPTION
Completed	Denied on the basis that remedial works have been completed. Hansen Yuncken acknowledged a responsibility to or, as an act of good faith, otherwise agreed to perform remedial work relevant to the defective work allegation, which work has been carried out and completed in accordance with applicable requirements and standards.
Disputed	Denied on the basis that there was no defect. The work the subject of the defective work allegation was carried out and completed in accordance with applicable requirements and standards in the first instance.
Duplicate	Denied on the basis that the defective work allegation is a duplicate.
GECC	Not admitted. Further investigation by or information from GECC has been requested and is otherwise required.
HY	Not admitted. Further Hansen Yuncken review or investigation is required and if necessary and applicable, Hansen Yuncken will perform remedial work relevant to the defective work allegation as part of its defect rectification obligations.
N/A	Denied on the basis that the defective work allegation is not applicable to Hansen Yuncken.
Not Admitted	The defective work allegation is not admitted and Hansen Yuncken will further plead to it after discovery and/or particulars are provided by the Council about the nature, basis and quantification of the Council's associated claim.

ROOM NO.	ITEM NO.	GECC DESCRIPTION	HY PLEADING	OTHER PARTY/PARTIES	FURTHER PARTICULARS
B.01		B.01 Basement			
B.01	1	Walls - Precast walls currently being cleaned from dirt, conc. etc. - HY to call for reinspection once complete.	Completed		
B.01	2	Floor - Concrete repair works were underway around outlets and drains - grinding is occurring - reapplication of epoxy required.	GECC		
B.01	3	Water staining from filters (clean to remove).	Completed		
B.01	6	Holes in southern and western walls - to be in-filled subject to superintendent's confirmation.	Completed		
B.01	7	Hardware - Double doors into plant area behind lift are incomplete.	Completed	Advanced Fire Doors Pty Ltd (Advanced)	

ROOM NO.	ITEM NO.	GECC DESCRIPTION	HY PLEADING	OTHER PARTY/PARTIES	FURTHER PARTICULARS
B.01	10	Clean steel stairs up to ground floor.	Completed		
B.01	13	The floor surface finish has an irregular finish (sand ratio) and has not been finished in some locations.	GECC	S & J Formwork Pty Ltd (In Liquidation) (S&J)	
B.01	14	Pipes and services not all marked. The pipe identification markings shall be installed in accordance with the specs.	HY	Keralton Plumbing & Drainage Contractors (Keralton)/Paramount Airconditioning (Aust) Pty Ltd (Paramount)	
B.01	15	Caulk to basement panels has failed. The caulking used does not appear to be suitable for below ground use. Provide details of the caulking type used and information from the supplier.	GECC	Concrete Precast Systems Pty Ltd (CPS)	
B.01	16	Basement panel wall in the north west corner (against the balance tank) has not been caulked.	Completed	CPS	GECC confirmed completion 05/08/13 (SI 5168)
B.01	17	Irrigation penetration to the basement not in accordance with the plan.	Completed	Artesian Industries Pty Ltd (Artesian)	GECC confirmed completion 05/08/13 (SI 5168)
B.01	19	Electrical penetration to the basement (EAST WALL) is undersized. There are two conduits, refer to the drawing documents and specifications.	Disputed	IES Australia Pty Ltd (IES)	2 conduits have been installed in lieu of 1 due to access. Draw wire has been installed
B.01	20	Plumbing penetrations are leaking.	Completed	Keralton	GECC confirmed completion 05/08/13 (SI 5168)
B.01	21	The floor has not been constructed to the design grades, to all parts of the basement.	Duplicate		GECC confirmed duplicate 14/06/13 (SI 5146)
B.01	22	The floor not grading to outlets and the floor levels are not in accordance with the design.	GECC		
B.01	23	Excessive water is ponding under the steel stairs (high point on the design).	GECC		

ROOM NO.	ITEM NO.	GECC DESCRIPTION	HY PLEADING	OTHER PARTY/PARTIES	FURTHER PARTICULARS
B.01	24	Grinding of the floor to the outlets has been conducted without input from a suitably qualified person, suitable investigation and a clear rectification proposal. The floor does not have adequate falls from the ponding to the outlets. The floor is being excessively ground to achieve falls in locations where filling would represent the best solution. The floor grading is being directed to storm water outlets instead of sewer outlets. Outlets and frames are being damaged.	HY		
B.01	25	The floor grading towards the lift well, at the western end, instead of grading away from it.	GECC		
B.01	26	Sewer and drainage pits not finished inside. Finish and clean the inside of the pits.	Completed	Keralton	
B.01	27	Old AG drain riser pipe to be sealed and new riser pipe connected.	HY	Keralton	
B.01	28	Permanent sewer/drainage dual pumps to be installed to pits and demonstrated with alarms in service.	Completed		
B.01	29	No stainless steel ladders to the pits.	Disputed	Keralton	Drawings did not require stainless steel ladders to the pits and they are otherwise not appropriate due to access issues
B.01	30	AG flushing points have to be exposed and raised to the surface and flushed and cleared as required.	Completed	Keralton	
B.01	31	Ag drains were subjected to extensive ingress of silt during construction. To be investigated for silt and debris and flushed and cleared as required.	HY		
B.01	32	The floor wastes and tundishes and pipes to be investigated for silt and debris and flushed and cleared as required.	HY		
B.01	34	There are unused pvc conduits projecting up from the slab.	Completed		
B.01	35	Slab to the north east corner is incomplete and does not align with the surface grate. It was poured without rectifying the reo inspection items and has no isolation to the balance tanks.	HY		
B.01	36	Suspended FRC drainage pipes are not supported on u brackets to each end of the pipe to manufacturer's specs.	Disputed	Keralton	
B.01	37	The cut openings into the panel walls have not been closed off and the exposed reo has not been protected.	Completed	Keralton/Walter J Pratt Pty Ltd (WJP)/IES	

ROOM NO.	ITEM NO.	GECC DESCRIPTION	HY PLEADING	OTHER PARTY/PARTIES	FURTHER PARTICULARS
B.01	38	Sealed duct behind the lift is not sealed.	Completed		
B.01	39	The ground floor slab has not been sealed around the services penetration to the north-east wall, western wall and elsewhere.	HY	WJP/Keralton/IES	
B.01	40	Cut ends of unistruts have not been primed with cold gal.	Completed	WJP	
B.01	41	Saddled support shall not be used for pipes greater than 50mm.	HY	Keralton	
B.01	42	Inadequate vertical and horizontal pipe supports.	HY	WJP/Keralton	
B.01	43	Steel frames on the ground, under the stairs are trapping dirt and are ponding water and shall be installed on plinths or propped of the ground to allow cleaning.	Disputed	GECC	Plinths are constructed on 10mm packers as approved by GECC consultant and specified
B.01	44	Penetrations of services through the slabs and walls do not have copper sleeves and caulking in accordance with the specification.	GECC	Artesian/WJP/Keralton/IES	
B.01	45	Tundishes to be constructed in copper as per the spec.	Disputed	WJP/Keralton	PVC tundishes installed. Appropriate for location and environment
B.01	46	Ensure showers to the slab above have self-cleaning brass 'p' traps.	Disputed	Keralton	The correct P traps have been installed. The traps installed are known as self-cleaning in the industry in Australia
B.01	47	Ensure floor wastes to slab above have self-cleaning HDPE 'p' traps.	Disputed	Keralton	The correct P traps have been installed. The traps installed are known as self-cleaning in the industry in Australia
B.01	48	Mechanical plant room and duct have not been sealed airtight. The top of the door frame has not been sealed, upper shaft not sealed, grille frames to walls not sealed.	Completed	Paramount	
B.01	49	Air outlet grille from the mechanical plant room to the basement plant is not 1500x1000 as per drawings. The grille/louver frame has not been properly secured to the wall.	Disputed	Paramount	

ROOM NO.	ITEM NO.	GECC DESCRIPTION	HY PLEADING	OTHER PARTY/PARTIES	FURTHER PARTICULARS
Ext Fac	293	Parts of the cladding against the glazing frame are missing the flashing.	Completed	Close Commercial	
Ext Fac	295	The edges of the sheets have sharp edges which project beyond the flashing edges and pose a danger to the public.	Completed	Close Commercial	
Ext Fac	298	The cladding is not sealed along the concourse and has a void underneath the wall.	HY	Close Commercial	
Ext Fac	299	Termite barrier not installed	Disputed	Trimec	Installed as specified
Ext Fac	302	Electrical cabling protruding from hurricane rib façade on southern side of the building	Completed		GECC confirmed completion 19/06/13 (SI 5147)
Ext Fac	303	Low level service pipe requires painting. (defect No. 140 completed)	HY		
Slide Tower		Slide Tower Structure			
Slide Tower	1	Slide tower steel frame painting not finished- Chips and scratches to paint inside the slide tower structure and outside the slide tower structure, and to the mesh frames.	HY	AMS	
Slide Tower	2	Paint Coating thickness to parts of the steel seemed low, approx. 150 microns.	Disputed	AMS	
Slide Tower	3	The plastic tape used behind the mesh will trap moisture and accelerate corrosion of the mesh and frame.	Disputed	Close Commercial/GECC	
Slide Tower	4	Extensive swarf over steel and stainless steel inside and outside the slide tower.	Disputed	AMS	
Slide Tower	5	Extensive rubbish and debris on structural steel inside the slide tower.	Completed		
Slide Tower	6	The structural steel has not been cleaned.	Disputed	AMS	
Slide Tower	7	The lower mesh frame is in contact with the ground and will be permanently exposed to moisture trapped against the screed.	Disputed	Access 1/GECC	
Slide Tower	8	The monotek on the hob has delaminated near the lower mesh frame.	Disputed	DPJ	
Slide Tower	9	The air duct is damaged at the penetration through the hob and the gap against the hob has not been sealed.	Disputed	Paramount	
Slide Tower	10	The joint between the two circular ducts in the top of the stair tower has not been executed in a workmanlike and is not visually acceptable.	HY	Paramount	
Slide Tower	11	Exposed ducts shall be painted.	Disputed		
Slide Tower	12	SS Unistruts supporting services inside the slide tower are missing bolts.	Disputed	WJP	

ROOM NO.	ITEM NO.	GECC DESCRIPTION	HY PLEADING	OTHER PARTY/PARTIES	FURTHER PARTICULARS
Slide Tower	13	Stainless steel handrails are scratched and the welds have been poorly finished and not polished adequately to protect from surface corrosion.	Disputed	Metallic/ GECC	Operational/maintenance issue
Slide Tower	14	Electrical cables and conduits have not been installed in a workmanlike manner and are not secured and have not been neatly installed.	HY	IES	
Slide Tower	16	The switches at the top of the tower have not been installed in a workmanlike manner and are only supported by a piece of timber.	Completed	IES	
Slide Tower	17	The rubber mat has not been properly stuck to the structure and is lifting along the edges.	Disputed	Berwick Floors/GECC	
Slide Tower	18	The water jets in the green slide are misaligned with the openings and deflect water over the edge of the water slide to the concourse below.	Disputed	WJP	
Slide Tower	20	Slide flanges – rubber protection not fitted (Mike Pettigrew's general report sent to HY by Andrea on 23/04/2012)	Disputed	WJP	
Slide Tower	21	All of the buttons at the base of the water slide tower aren't attached to anything, you can just pull them out and expose all of the wiring	Completed	WJP	
Slide Tower	22	Leak from the flashing around the slide where the raft slide penetrates the tension fabric.	HY	Oasis Tension Structures (Australia) Pty Ltd (Oasis)	
Slide Tower	23	Leak from the water supply pipe to the raft slide.	Disputed	WJP	
Slide Tower	24	Additional Defect arising from NC 11068 Stair nosing failed - public safety issue.	Disputed	Berwick Floors/GECC	
Slide Tower	25	Additional defects have become apparent 13/03/2013 not yet sent to HY. The top surface paint applied to the face of the stair treads was not the specified product and was applied without any preparation of the surface and without adequate thickness and has failed.	Disputed	AMS/GECC	
Slide Tower	26	The paint to the steel landings and steps was not adequately protected, damaged during installation of the rubber surface along the edges and joints. The cutting knife used has penetrated through the paint layers and exposed the base steel to corrosion.	Disputed	Berwick Floors	
Slide Tower	27	Section of the monotek surface missing between the base of the stairs and the slide tower.	HY	DPJ	
Slide Tower	28	Services penetrations through the slab under slide tower has not been sealed.	HY		

SCHEDULE E – DELAY EVENTS

ITEM	DOCUMENT REF	DESCRIPTION
1.	Schedule D – Hansen Yuncken Variations to this Defence and Counterclaim	As detailed in Schedule D – Hansen Yuncken Variations to this Defence and Counterclaim, 274 variations to the Works were directed or otherwise required by or on behalf of the Council throughout Hansen Yuncken's performance of the Works.
2.	Schedule B – Alleged Defective Works to this Defence and Counterclaim	<ol style="list-style-type: none"> As demonstrated in part by Schedule B – Alleged Defective Works to this Defence and Counterclaim, the Council or those within its authority or control, took an approach to the: <ol style="list-style-type: none"> investigation; assessment; classification; notification; reporting; and rectification of defects, which Hansen Yuncken says was: <ol style="list-style-type: none"> contrary to the Contract; contrary to common industry practice and standards; and otherwise unwarranted, especially in context of the quality of the Works. As a result of this approach of the Council or those within its authority or control, Hansen Yuncken was required to spend an inordinate amount of time and resources dealing with alleged defective work-related issues throughout and in respect of the Works.
3.		<ol style="list-style-type: none"> The Council engaged Hansen Yuncken as a construct-only contractor, such that design risk and responsibility related to and connected with the work under the Contract lay with the Council, who in turn engaged various design consultants to provide it design-related services in relation to and connected with the Project and the work under the Contract. As a result of a lack of or deficiencies in design documentation provided by or on behalf of the Council, Hansen Yuncken was required to spend an inordinate amount of time and resources dealing with design-related issues throughout and in respect of the Works. This requirement of Hansen Yuncken and general poor design documentation provision and management by or on behalf of the Council was reflected in the following: <ol style="list-style-type: none"> Hansen Yuncken was required to prepare and liaise with the Council or those within its authority or control in respect of 1858 Requests for Information (RFIs) throughout the course of the Works (1733 pre-Practical Completion and 125 post-Practical Completion); the Council sent 5177 Site Instructions (SIs) throughout the course of the Works (4470 pre-Practical Completion and 707 post-Practical Completion); and 274 variations to the Works were directed or otherwise required by or on behalf of the Council throughout the course of the Works
4.	NOD No. 001 dated 24/11/09 and 08/12/09	Asbestos was discovered on site on 25/11/09 in the existing pools.
5.	(Aconex) HY-Vic-NOD-000001 dated 04/02/10	<ol style="list-style-type: none"> Precast panels B31-B40 were put on hold by or on behalf of the Council in order to review wall position and basement access voids. The panels were released from hold after 1 day.
6.	HY letter to GECC (Raj)	The 'for construction' drawings for the pools increased the width of the blinding concrete.

ITEM	DOCUMENT REF	DESCRIPTION
	Gopalakrishnan) dated 17/02/10	
7.	(Aconex) HY-Vic-NOD-000002 dated 11/03/10 (Aconex) HY-Vic-EXTOFTIME-000002	Asbestos was discovered as were soft spots during ground works which needed remediation.
8.	(Aconex) HY-Vic-NOD-000003 dated 11/03/10	<ol style="list-style-type: none"> 1. Asbestos was discovered on site on 3 March 2010 and then again on 4 March 2012. 2. Delays were incurred whilst waiting for a direction to remove the asbestos and through the Works being put on hold while it was removed.
9.	(Aconex) HY-Vic-NOD-000004 dated 18/03/10	South East Water waited on a letter of permission from the owners of 8 Parkmore Rd before issuing approval to commence external sewer works, causing delay to Activity 222 - "External Sewer Connections and Reticulation".
10.	(Aconex) HY-Vic-NOD-000005 and 000006 dated 19/03/10 and 30/03/10 (Aconex) HY Vic EXTOFTIME - 000001 dated 20/04/10	<ol style="list-style-type: none"> 1. There were delays in the procurement of details (and in turn, Jemena approval) of the substation works in order for those works to commence. 2. Programme rev 00 required those details by 08/12/09. Rev 03 revised this to 24/02/10. 3. Details were ultimately provided on 13/04/10 (refer SI116). 4. As a result of their late receipt, Activity 246 "Strip and pad footings substation" and subsequent activities were delayed. 5. 40 days' delay was claimed. 6. Hansen Yuncken mitigated delays by carrying out work beyond scope and preparing a substation design for approval.
11.	(Aconex) HY-Vic-NOD-000008 dated 20/04/10 (Aconex) HY Vic EXTOFTIME - 000002 dated 30/04/10	<ol style="list-style-type: none"> 1. Asbestos was discovered Asbestos was discovered in the Zone 2 southern car park on 19/04/10, requiring testing and removal. 2. Asbestos was removed on 21/04/10. 3. 2 days' delay was claimed.
12.	(Aconex) HY-Vic-NOD-000009 dated 20/04/10. (Aconex) HY Vic EXTOFTIME - 000003 dated 03/05/10	<ol style="list-style-type: none"> 1. The for construction drawings for the Zone 2 southern car park were incomplete. 2. The process of seeking and receiving clarification/completed drawings caused 3 days' delay.
13.	(Aconex) HY-Vic-NOD-000010 and 000011 dated 20/04/10 and 03/05/10	<ol style="list-style-type: none"> 1. Programme (Rev 00) (Activity 191) required the Council to appoint a water slide contractor by 03/12/09, with slide design and shop drawings to be completed by 05/03/10. 2. These activities were completed on about 01/06/10 and 11/06/10 respectively. 3. Hansen Yuncken was unable to complete plenum walls in the relevant area until water slide design details were received.
14.	(Aconex) HY-Vic-EXTOFTIME-000004	A union rally took place on 28/04/10.

ITEM	DOCUMENT REF	DESCRIPTION
15.	(Aconex) HY-Vic-NOD-000012 dated 12/05/10	RFIs 74, 85, 86, 102, 118, 172, 175, 181, 184 and 202 regarding structural steel were answered late. RFI 74 was dated 06/04/10, with a final response not provided until the provision of SI 2022 on 16/05/10 (41 days later).
16.	(Aconex) HY-Vic-NOD-000014 dated 20/07/10 (Aconex) HY Vic EXTOTIME – 000005 dated 21/07/10	An informal look place on 20/07/10
17.	(Aconex) HY-Vic-NOD-000015 to 000017 dated 14/09/10	<ol style="list-style-type: none"> 1. Programme (Rev 00) provided that the slide design was to be completed by 5/03/10. Rev 4a pushed that out to 02/08/10. 2. The Works were delayed due to the delay in the Council's provision of the final design model for the pool hall structural steel (primarily, the pool hall elliptical truss and associated roof steel design). In particular, there were issues with tolerances between the slides, stair tower, canopy and roof steel. 3. The design was completed on 02/12/12, representing a delay of 124 days. 4. Hansen Yuncken mitigated delays by electing to work 6 day weeks and overtime.
18.	(Aconex) HY-Vic-NOD-000018 dated 08/10/10	The number of colours used in the leisure pool tiling was changed from 4 to more than 11 through SI747. This was reflected in GECC VARN 68.
19.	(Aconex) HY-Vic-NOD-000020 dated 29/10/10	<ol style="list-style-type: none"> 1. Hansen Yuncken's tiling contractor, Ceramic Solutions, was trying from April 2010 to obtain information on the Council's tile colour choices. 2. Some were received on 28/10/10, but many were outstanding until 14/01/11, which, when coupled with manufacturing/shipping lead times caused delay.
20.	(Aconex) HY-Vic-NOD-000021 dated 04/11/10	<ol style="list-style-type: none"> 1. By RFI 603 dated 8/10/10, Hansen Yuncken requested information regarding concrete mix design for the slide balance tank walls, in particular, due to there being conflicting designs. 2. The Council did not respond to RFI 603 until 25/10/10 (18 days later), through SI 932, causing delays to the relevant Works.
21.	(Aconex) HY-Vic-NOD-000022 dated 10/12/10	Activities 201 and 202 in the ground floor entry became a critical path item and delays were caused on account of design reviews by the project architect that were relevant to these activities.
22.	(Aconex) HY-Vic-NOD-000023 dated 09/02/11	Delays in responses to RFIs 753, 779, 808 and 827 regarding the BMS points. RFI 753 was dated 10/12/10, with a final response not provided until the provision of SI 1264 on 12/01/11 (34 days later).
23.	(Aconex) HY-Vic-NOD-000024 dated 17/02/11	An inspection of the staircase at Grid E showed the span between grids 1 and 2 to be greater than that shown on the structural drawings, with delays caused until design issues were clarified.
24.	(Aconex) HY-Vic-NOD-000026 dated 05/04/11	Through SI 1307, the Council changed the design for the foyer/bubble roof, impacting on steelwork, roof finishes and hydraulics.
25.	(Aconex) HY-Vic-NOD-000027 dated 05/04/11	RFI 920 dated 28/02/11 regarding the slide access stair was not answered until 01/04/11 through SI 1735 (33 days later).

ITEM	DOCUMENT REF	DESCRIPTION
26.	(Aconex) HY-Vic-NOD-000028 dated 05/04/11	RFI 921 dated 09/03/11 regarding the hydraulic plumbing was not answered until 01/04/11 through SI 1740 (24 days later).
27.	(Aconex) HY-Vic-NOD-000029 dated 05/04/11	RFI 953 dated 08/03/11 regarding wall finish types was not answered until 01/04/11 through SI 1712 (25 days later).
28.	(Aconex) HY-Vic-NOD-000030 dated 05/04/11	RFI 944 dated 07/03/11 regarding the auto-flush sensors was not answered until 06/04/11 through SI 1775 (31 days later).
29.	(Aconex) HY-Vic-NOD-000031 dated 05/04/11	RFI 929 dated 03/03/11 regarding the downpipes over the entry was not answered until 08/08/11 through SI 2733 (159 days later).
30.	(Aconex) HY-Vic-NOD-000032 dated 05/04/11	RFI 968 dated 11/03/11 regarding the HD bolts was not answered until 04/04/11 through SI 1742 (25 days later).
31.	(Aconex) HY-Vic-NOD-000033 dated 08/04/11	RFI 909 dated 24/02/11 regarding the beam design for roof plant platform/level 1 mechanical duct was not answered until 19/04/11 through SI 1862 (55 days later).
32.	(Aconex) HY-Vic-NOD-000034 dated 08/04/11	RFI 1017 dated 31/03/11 regarding the glass types for windows W08, W09, F02, W09a and F03 was not answered until 12/04/11 through SI 1815 (13 days later).
33.	(Aconex) HY-Vic-NOD-000035 dated 08/04/11	RFI 984 dated 22/03/11 regarding the wall support to level 1 west elevation was not answered until 18/04/11 through SI 1846 (28 days later).
34.	(Aconex) HY-Vic-NOD-000036 dated 08/04/11	RFI 972 dated 16/03/11 regarding the lifeguard duress system was not answered until 19/04/11 through SI 1859 (35 days later).
35.	(Aconex) HY-Vic-NOD-000037 dated 08/04/11	RFI 987 dated 23/03/11 regarding the approval for fire detection equipment was not answered until 20/04/11 through SI 1794 (29 days later).
36.	(Aconex) HY-Vic-NOD-000038 dated 08/04/11	RFI 1003 dated 25/03/11 regarding the piping for main entry drainage was not answered until 08/04/11 through SI 1794 (15 days later).
37.	(Aconex) HY-Vic-NOD-000039 dated 18/04/11	RFI 1002 dated 25/03/11 regarding the dimensioned reflected ceiling plans showing lighting layout was not answered in full until 19/04/11 through the receipt of SI 1860 (26 days later).
38.	(Aconex) HY-Vic-NOD-000040 dated 29/04/11	GECC made changes to spa glazing through SI 1181. Delays were caused while Hansen Yuncken waited for instructions to commence the works and agreement as to a variation price.
39.	(Aconex) HY-Vic-NOD-	RFI 1053 dated 12/04/11 regarding the pool/occasional care fence was not answered until 27/06/11 through SI 2342 (77 days later).

ITEM	DOCUMENT REF	DESCRIPTION
	000041 dated 29/04/11	
40.	(Aconex) HY-Vic-NOD-000042 dated 02/05/11	RFIs numbered 753, 779, 808, 827, 938, 951, 1029, 1074, 1075 and 1088 regarding the BMS were answered late. RFI 753 was dated 10/12/10 with a final response not provided until the provision of SI 2113 on 25/05/11 (167 days later).
41.	(Aconex) HY-Vic-NOD-000043 dated 02/05/11	Changes were made to the tablet windows between the pool, gymnasium and wellness centre on level 1 through CV 167. Delays were caused while Hansen Yuncken waited for instructions to commence the works and agreement as to a variation price.
42.	(Aconex) HY-Vic-NOD-000044 dated 18/05/11 (Aconex) HY-Vic-EXTOFTIME-000010 dated 23/05/11	RFI 1100 dated 05/05/11 regarding a non-compatible waterproofing membrane to the wet areas and around the amenities was not responded to until 16/05/11 through SI 2026 (12 days later), which itself failed to address the incompatibility of the membrane. This issue was not resolved until SI 2353 dated 28/06/11 (55 days after the provision of RFI 1100).
43.	(Aconex) HY-Vic-NOD-000045 dated 20/05/11	RFI 1082 dated 20/04/11 regarding the main entry glass curtain wall not answered until 17/05/11 through SI 2035 (28 days later).
44.	(Aconex) HY-Vic-NOD-000046 dated 25/05/11	RFI 980 dated 21/03/11 regarding fire detection and OWS was not answered until 11/04/11 through SI 1801 (22 days later).
45.	(Aconex) HY-Vic-NOD-000048 dated 08/06/11 (Aconex) HY Vic EXTOFTIME – 0000011 dated 23/05/11	RFI 1019 dated 01/04/11 regarding the PA and SMATV systems was not answered in full until 11/04/11 through SI 2690 (11 days later).
46.	(Aconex) HY-Vic-EXTOFTIME-000013 dated 16/06/11	A significant and excessive number of RFIs were answered late, leading to HY being delayed in the preparation, submission and approval of structural steel shop drawings associated with the Main Entry structure.
47.	(Aconex) HY Vic EXTOFTIME – 000014 dated 16/06/10	Delays between 22/12/10 and 03/10/11 (286 days) in respect of steel and other design elements in respect of the main entry.
48.	(Aconex) HY-Vic-NOD-000049 dated 22/06/11	A delay was caused by the late provision of an instruction to proceed with the variation directed through SI 2310 dated 22/06/11, which instruction was not provided until 19/07/11 through SI 2532 (28 days later).
49.	(Aconex) HY Vic EXTOFTIME – 0000015 dated 23/06/11	RFI 1185 dated 03/06/11 regarding the rubber soft fall to the Outdoor Play Area was not answered until 14/07/11 through SI 2488 (42 days later).
50.	(Aconex) HY-Vic-NOD-	RFI 1128 dated 18/04/11 regarding the cast-in plate to the outdoor play pool perimeter fence was not answered until 27/06/11 through SI 2342 (71 days later).

ITEM	DOCUMENT REF	DESCRIPTION
	000050 dated 28/06/11	
51.	(Aconex) HY-Vic-NOD-000051 dated 28/06/11	RFI 1139 dated 23/05/11 regarding final design drawings for the oval windows to the gymnasium was not answered until 30/06/11 through SI 2389 (39 days later).
52.	(Aconex) HY-Vic-NOD-000052 dated 28/06/11	RFI 1174 dated 01/06/11 regarding technical information required by Hansen Yuncken's mechanical subcontractor, Paramount Air Pty Ltd, was not answered until 28/06/11 through SI 2365 (28 days later)
53.	(Aconex) HY-Vic-NOD-000053 dated 28/06/11	RFI 1183 dated 03/06/11 regarding lack of drainage/fall for the tanked roof in drawings A4.11 and H511 was not answered until 12/07/11 through SI 2365 (40 days later).
54.	(Aconex) HY-Vic-NOD-000054 dated 28/06/11	RFI 1188 dated 01/06/11 regarding discrepancies between the door schedule forming part of the specifications and VOS drawings E421 and E521 was not answered until 08/07/11 through SI 2455 (38 days later).
55.	(Aconex) HY-Vic-NOD-000055 dated 28/06/11	RFI 1190 dated 07/06/11 regarding egress buttons and emergency break-glass units was not answered until 28/06/11 through SI 2347 (22 days later).
56.	(Aconex) HY Vic EXTORTIME – 000016 dated 13/07/11	A CFMEU mass meeting was held on 13/07/11.
57.	(Aconex) HY-Vic-NOD-000057 dated 27/09/11	RFI 1230 dated 29/06/11 regarding the west flashing detail to the tension fabric where no box gutter could be installed around the elliptical ring was not answered in full until 07/09/11 through the receipt of SI 3029 (71 days later).
58.	(Aconex) HY-Vic-NOD-000059 dated 12/10/11	Changes to drawings for the leisure pool linear drains through SI 3292.
59.	(Aconex) HY-Vic-NOD-000061 dated 24/10/11	RFI 1476 dated 08/10/11 regarding silencers in the wall along grid 4 (drawings A8.02, A5.02 and M301) was not answered until 25/10/11 through SI 3408 (18 days later).
60.	(Aconex) HY-Vic-NOD-000063 dated 24/01/12	On 20/01/12, GECC advised Hansen Yuncken about a change to the drawings regarding the screed pour to slide tower area. The pour was to occur on 21/01/12 (refer INR 146), but could not occur until 24/01/12 (3 days later).
61.	(Aconex) HY-Vic-NOD-000064 dated 03/02/12	SI 3923 dated 03/02/12 made changes to handrail design to slide penetrations, 72 days after Hansen Yuncken raised this as an issue of concern through site meeting no. 47 on 24/11/11.
62.	RFI 1005 dated 25/03/11	RFI 1005 dated 25/03/11 regarding the glass gutter along the stadium wall was not answered until 06/04/11 through SI 1772 (13 days later).