

THE OLYMPIC STADIUM: INNOVATION IN PROJECT FINANCING

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I. INTRODUCTION

The largest facility developed for the Games of the XXVII Olympiad to be held in Sydney in the Year 2000 is the Stadium at Homebush Bay now known as Stadium Australia.

When preparing Sydney's bid for the Olympics in the early 1990s, those responsible for the bid envisaged that Sydney's existing stadiums - notably the Sydney Football Stadium and Sydney Cricket Ground - would be inadequate for the purposes of the Olympic Games' opening and closing ceremonies, the athletics track and field finals and the soccer finals. The bid envisaged the construction of a new large stadium at Homebush Bay to the west of Sydney's central business district.

In 1999 the completed Stadium Australia is already establishing itself as an important part of Sydney's sporting and social environment. It has many notable features. With a seating capacity prior to and during the Olympics of 110 000 seats, it is one of the largest stadiums in the world. On 28 August 1999 it hosted a crowd of 107 000 people to watch the Australia-New Zealand Bledisloe Cup match, a world record for a rugby match. It is more than a kilometre around the base of the stadium. However, the notable feature which I wish to discuss in this article is not readily apparent to a visitor to the Stadium. The financing of the development of Stadium Australia itself set a new milestone in the financing of 'public' facilities. The project was largely financed by the private sector, not by the Government and taxpayers. The aim of this article is to describe the nature of the financing and of the contractual and commercial underpinnings of the financing and to discuss generally this method of delivering a public facility.

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II. TENDER PROCESS

In 1994 the New South Wales Government issued a general invitation for expressions of interest in financing, designing, constructing and operating a stadium at Homebush Bay suitable for the purposes of the 2000 Olympics and in the long term for rugby league and soccer.¹ The invitation was issued pursuant to the New South Wales Guidelines for Private Sector Participation in Infrastructure.

The Government's primary aim in choosing this approach to delivering the project was to receive innovative proposals which would minimise the impact of the project on the taxpayer.² It also saw an opportunity to shift risk - particularly the market risk - from the public to the private sector. By contrast, if the Government had elected to take a more traditional approach and require that the Stadium be in public ownership, the Government would have had to budget for and pay the capital cost of the project. Just as significantly it would have meant the Government bearing the long term risk of earning sufficient revenues from the operation of the Stadium to amortise the capital cost over the life of the project, and to avoid the Stadium being a long term drain on the public purse.

The Government received a number of expressions of interest. They justified it proceeding further.

In 1995 the Government formed the Olympic Co-ordination Authority (OCA). Through OCA the Government issued a Call for Detailed Proposals to three short-listed proponents. Following evaluation of the detailed proposals submitted, the SA 2000 Consortium (comprising Multiplex Constructions, Hambros Australia, Macquarie Bank and Obayashi Corporation) was appointed the preferred proponent. The hallmarks of its proposal were:

- (a) a stadium with an Olympic capacity of 110 000 seats, reducing after the Olympics to 80 000;
- (b) a reconfiguration of the Stadium after the Olympics to a rectangular football field;
- (c) the use of 'Olympic rights' to assist in the financing of the project;
- (d) an underwritten issue of equity to the public;
- (e) the Stadium being available rent-free to SOCOG for the purposes of the Olympic Games and Paralympic Games;
- (f) total project cost of approximately \$600 million; and
- (g) a low Government contribution.³

Subsequent commercial negotiations resulted in project documentation being executed in September 1996. Construction proceeded on schedule and practical completion of the Stadium was achieved in March 1999.

1 NSW Government, "Call for Proposals for Private Sector Investment in the Olympic Stadium", August 1994.

2 *Ibid.*

3 Detailed proposal submitted by SA 2000 Consortium, August 1995.

III. THE PLAYERS

Before proceeding further it is appropriate to refer to the names of the companies and institutions most involved in the contractual structure of the Stadium project:

OCA - the Olympic Co-Ordination Authority, a statutory corporation established under the Olympic Co-Ordination Act 1995 and charged with the development of all venues needed for the Olympic Games and Paralympic Games.

SAT - the Stadium Australia Trust, the entity which owns the Stadium.

SAM - Stadium Australia Management Limited, charged with management of the business of the Stadium.

SAG - the Stadium Australia Group, including SAT and SAM.

SOCOG - Sydney Organising Committee of the Olympic Games, a corporation established by statute but not representing the Crown and charged with the staging of the 2000 Olympic Games and Paralympic Games.

Obayashi Corporation and Multiplex Construction Pty Limited - the companies contracted by SAT to design and construct the Stadium.

Ogden IFC - Ogden International Facilities Corporation (Sydney) Pty Limited, the operator of the Stadium on behalf of SAM.

The Founders - Multiplex Constructions Pty Limited, Hambros Australia Limited, Macquarie Corporate Finance Limited and Obayashi Corporation, the members of the SA 2000 Consortium.

The Underwriters - Bain & Co Corporate Finance, ANZ Securities, Macquarie Underwriting and ABN AMRO.

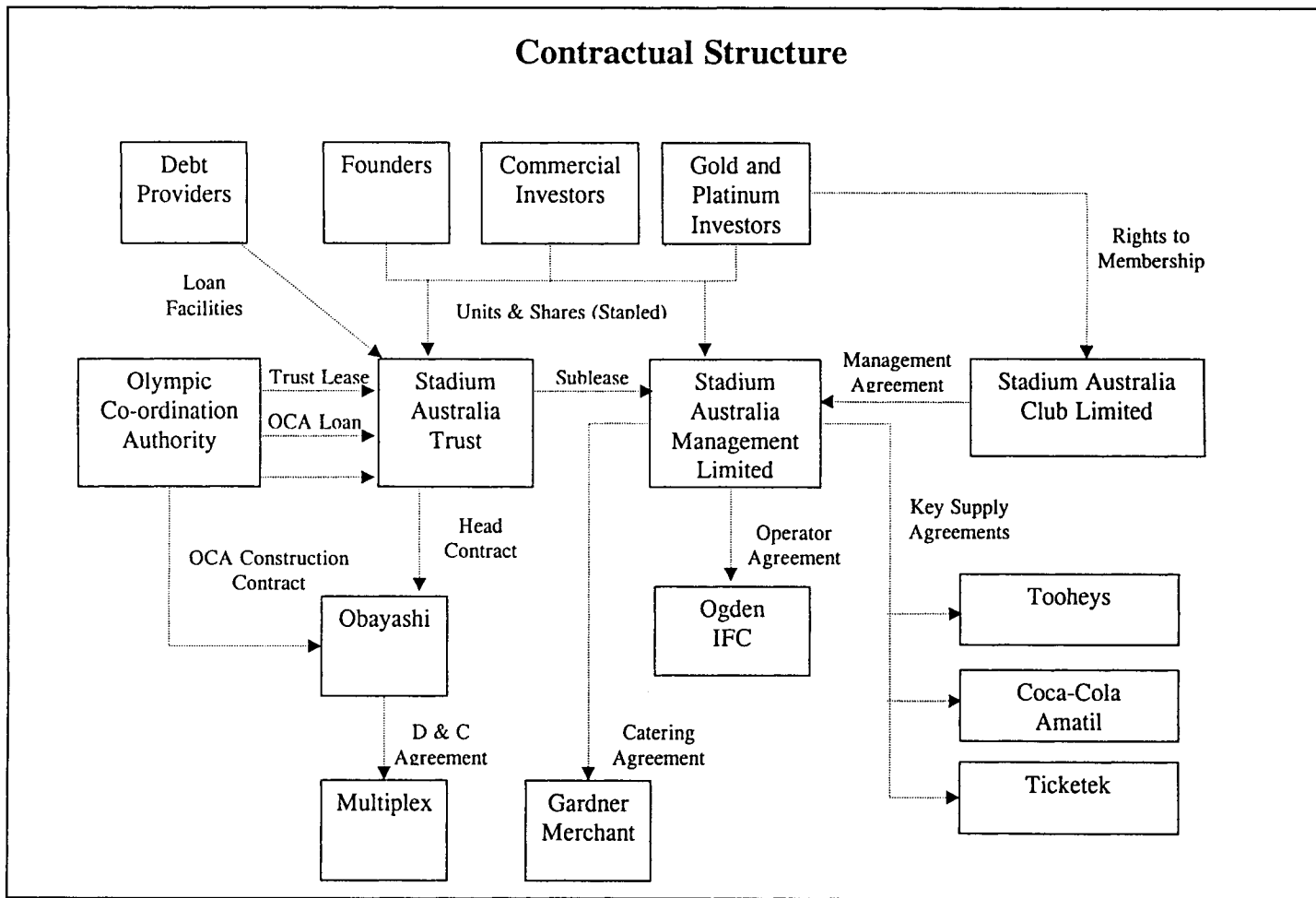
The Banks - ANZ Banking Group and ABN AMRO.

IV. CONTRACTUAL STRUCTURE OF THE PROJECT

The project was large in contractual terms - over 90 contracts and agreements. Set out on the next page is a diagrammatic representation of the contractual structure of the Stadium project. It shows the major contracts.

Besides its complexity two things are notable about the contractual structure. Firstly, the contracts interlock like pieces in a jigsaw to support the financing of the project.

Secondly, OCA and SOCOG needed to secure by contractual means the rights which they needed and requirements which they had of the project. For example, SOCOG required exclusive possession of the Stadium free of charge for the purposes of the Olympic Games and Paralympic Games, Olympic test events and non-exclusive access for Games' fitout purposes; and OCA required that, following the Games, the Stadium have a rectangular layout suitable in the long term as a venue for rugby, rugby league and soccer in Sydney. Of course, if the Stadium had been publicly funded, the Government would have had direct control and would not have needed to protect its position by contractual means.



V. CONCESSION DOCUMENTS

The primary contract underpinning the project was the Stadium Australia Project Agreement between OCA and SAT dated 16 September 1996.⁴ It granted to SAT a concession to develop the Stadium and operate it for a period of approximately 30 years from practical completion. The Project Agreement obliged SAT to:

- finance, plan, design and construct the Stadium (with the exception of some works funded by OCA), to a specification agreed by OCA;
- procure the operation, maintenance and repair of the Stadium during the term of the concession;⁵
- make the Stadium available to SOCOG for the purposes of the 2000 Olympic Games and Paralympic Games;⁶
- reconfigure the Stadium after the Games into its post Olympic configuration of approximately 80 000 seats;⁷
- yield up possession of the Stadium to OCA at the end of the concession.

The Project Agreement was the primary document by which the commercial and other risks inherent in the project were allocated between the Government and the private sector. The major risks included the following:

- SAT bore the design and construction risk, that is, the risk that the project would be designed and constructed according to specifications and would be completed within budget and on time. SAT was required to meet various construction milestones and was liable to OCA for liquidated damages for late completion. SAT provided OCA with a \$45 million bond as security for the performance of its design and construction obligations.
- SAT accepted the full market risk of the project, that is, the risk that revenues from the operation of the Stadium will be sufficient to service and amortise the bank debt and to pay an adequate return to its shareholders. The risk is that the expected events schedule (especially the type and number of events) and the revenue from corporate hospitality and other concessions will be insufficient. The risk was exacerbated by the largely fixed cost nature of the Stadium's operations such that a reduction in operating revenues could not be met by a similar reduction in costs.

4 Project Agreement between OCA and Perpetual Trustees Company Limited as trustee of the Stadium Australia Trust, dated 16 September 1996.

5 *Ibid*, cl 2.1(a)(i).

6 *Ibid*, cl 2.1(a)(ii).

7 *Ibid*, cl 2.1(a)(iii).

It is instructive to contrast this risk allocation with that which would have existed if the Government had opted to fund the capital cost itself and have the Stadium in public ownership. The Government would have had the risk and responsibilities of operating the business of the Stadium efficiently so that it did not become a drain on the taxpayer. The Government would have had to have been in the business of sporting and entertainment events, attracting events to the Stadium, attracting patrons and the like. Arguably, this is not an essential public service deserving of Government investment. Arguably, too, even if the community did regard such an investment as appropriate, the private sector is better suited to make the investment and operate such a business.

- SAT is also responsible for operating and maintaining the Stadium in accordance with various pre-agreed standards. SAT is obliged to procure the funding in a major maintenance account for the purpose of funding major maintenance and replacement of plant and equipment and ensuring that the Stadium is in an adequate condition at the end of the term of the concession.
- The Government also assumed a number of important obligations under the Project Agreement.⁸ Government policy was to encourage the use of public transport to the Stadium and to minimise the use of private motor vehicles and car parking in the Homebush Bay precinct. The consequences for the Stadium of an inadequate public transportation system therefore were potentially serious. Ongoing poor attendances would significantly impact the attractiveness to potential hirers of the Stadium and the revenues of the Stadium generally. Accordingly, the Government through OCA agreed with SAT that it would implement a transportation strategy which included:
 - a railway station at Homebush Bay and a rail loop with an operational capacity of 30 trains (eight cars) per hour being connected to the main western line between Flemington and Lidcombe Stations; and
 - a regional bus system with the capacity to move up to 28 000 people per hour.
- The Stadium's investors and financiers accepted the risk that other venues such as the Sydney Football Stadium, the Sydney Cricket Ground or Parramatta Stadium could be redeveloped or a new stadium developed during the term of the concession which draws away hirers and events from the Stadium. However they were not prepared to accept the risk that Government would promote or fund such a redevelopment or new development at a time when there was no commercial demand for new venues or greater seating capacity in the greater Sydney area. OCA accordingly undertook to enter good faith

8 For example, the Homebush Bay Transport Strategy.

negotiations with SAT in the event that such an event occurred and impacted adversely on SAT's ability to carry out the project or repay its bank debt or make distributions to its investors.

OCA also entered into an Agreement for Lease with SAT. It agreed to grant to SAT on practical completion a lease of the Stadium for the period of the concession, that is, until 31 January 2031.⁹ At that time the Stadium will revert to public ownership at no cost to the Government.

Because the obligations of OCA under the Project Agreement were and continue to be potentially extensive, and because there was some doubt about the status of OCA post Games, SAT's investors and financiers required that OCA's commitments be supported by a Government guarantee. The Government agreed and provided a guarantee of OCA's obligations in the form of a guarantee under s 22B of the *Public Authorities (Financial Arrangements) Act 1987* (NSW).

VI. SOCOG

After extensive negotiations the Stadium Australia Group (SAG) reached agreement with OCA and SOCOG on the terms on SOCOG's possession and use of the Stadium for the purposes of the 2000 Olympic Games and Paralympic Games. Their agreement was embodied in the Venue Agreement under which:

- SAM, which would have a sublease of the Stadium from SAT, granted to SOCOG the exclusive right to occupy, use and control the Stadium from 1 September to 22 November 2000 as well as during certain specified 'test event' periods;¹⁰
- in the pre-Games period commencing on 1 July 2000, SOCOG will have non-exclusive access to the Stadium to conduct fit-out works for the Olympic Games;¹¹
- SAM is obliged to procure various building services and other utilities for SOCOG's use during the Games;¹²
- the rights of members of the Stadium Australia Club are suspended during the Games;
- SOCOG is responsible for the carrying out, maintaining and removing all of its fit-out works.¹³

In addition SAT and SOCOG negotiated a means by which SAT could utilise 'commercial rights' relating to the Olympics in order to raise in excess of \$300 million from the public to part finance the development of the Stadium. Under the arrangements, SOCOG agreed to grant entitlements to purchasers of Gold

9 See the Agreement to Lease between OCA and SAT, cl 10.1.

10 Venue Agreement, cll 7.1, 8.1, 11.1.

11 *Ibid*, cll 10.8, 11.13.

12 *Ibid*, cl 12.

13 *Ibid*, cl 10.

Packages and Platinum Packages to tickets to events in the Stadium during the 2000 Olympic and Paralympic Games.

The Stadium project and the negotiations with SAG were challenging to SOCOG. Firstly it was required to make decisions about the events to be held at the Stadium, the event schedule and even the pricing of tickets well in advance of the program it had established and in advance of receiving the requisite information from the International Olympic Committee (IOC) and its constituent sporting federations. Secondly it was concerned to protect its own revenue base and not damage its ability to raise sponsorship money. These concerns were reflected in the documentation:

- SOCOG set out a series of guidelines, requirements and restrictions in relation to its approval of the identity of holders of tickets to Olympic events and the transferability of entitlements to those tickets. SOCOG reserved the right to object to the allotment of a Gold Package or Platinum Package to the corporate world, from which it was raising the bulk of its sponsorship revenue. No Olympic tickets derived through the Gold Packages or Platinum Packages could be used as part of any commercial advertising or promotional scheme and must not be sold or traded under any circumstances.
- SAM is obliged to ensure that the Stadium is provided as a 'clean venue' for SOCOG during the 2000 Olympic Games and Paralympic Games. That is, all rights of concession holders and advertisers at the Stadium prior to the Games must terminate so that during the Games period the Stadium will only carry the advertisements of and have as concession holders companies providing sponsorship revenue to SOCOG.
- SOCOG required protection from 'ambush marketing'. SAG and its contractors and subcontractors must not in any way use, promote or advertise that they have any connection or association with the Olympic Games or any Olympic body and must not use any intellectual property relating to the Games in any way. For example, SAG and its contractors cannot use the Olympic five rings symbol and the Stadium cannot be called The Olympic Stadium.

VII. CONSTRUCTION

Construction was scheduled to be carried out in two stages. Completion of Stage 1 was achieved in March 1999 when the Stadium and the precinct around it were completed in Olympic configuration. The seating capacity of the Stadium in this configuration is approximately 110 000.

Stage 2 will be the construction to be undertaken in late 2000 and early 2001 which will result in the Stadium being reconfigured to its post Olympic, long term configuration. Notably, the large top tier end stands on the northern and southern sides of the Stadium will be removed and the seating capacity of the

Stadium will reduce to approximately 80 000. Roofs will be constructed over the balance of the north and south end stands, the athletic track will be removed, the seating in the lower bowl will be relocated and the playing surface will be in rectangular format suitable for the football codes.

Under a Head Contract, SAT contracted with Obayashi Corporation to construct the Stadium on a fixed price fixed time basis. Obayashi in turn subcontracted that work to Multiplex Constructions on the same basis. Each of Obayashi and Multiplex provided the banks with a completion guarantee.

If the Government had opted for a publicly funded, more traditional procurement method, it would have been due to pay the construction cost contract sum prior to or on practical completion of the Stadium. In fact, SAT made this payment using the equity and debt which it raised.

In order to be commercially viable, the project required a contribution of approximately \$90 million from the New South Wales Government. That contribution was provided by OCA carrying out various earth works and other construction works.

VIII. OPERATIONS

SAG appointed Ogden IFC as its agent to operate the Stadium. Ogden IFC's parent company operates many stadiums and other sporting venues in the United States. Ogden IFC's role is to:

- co-ordinate the marketing of the Stadium to potential hirers;
- assist in the organisation of events by hirers;
- ensure that all subcontractors (including catering, beverage suppliers and ticketing subcontractors) comply with the terms of their contracts with SAG;
- oversee the operation, maintenance and repair requirements of the Stadium;
- manage the Stadium Australia Club membership base.

SAG entered into a number of long term contracts:

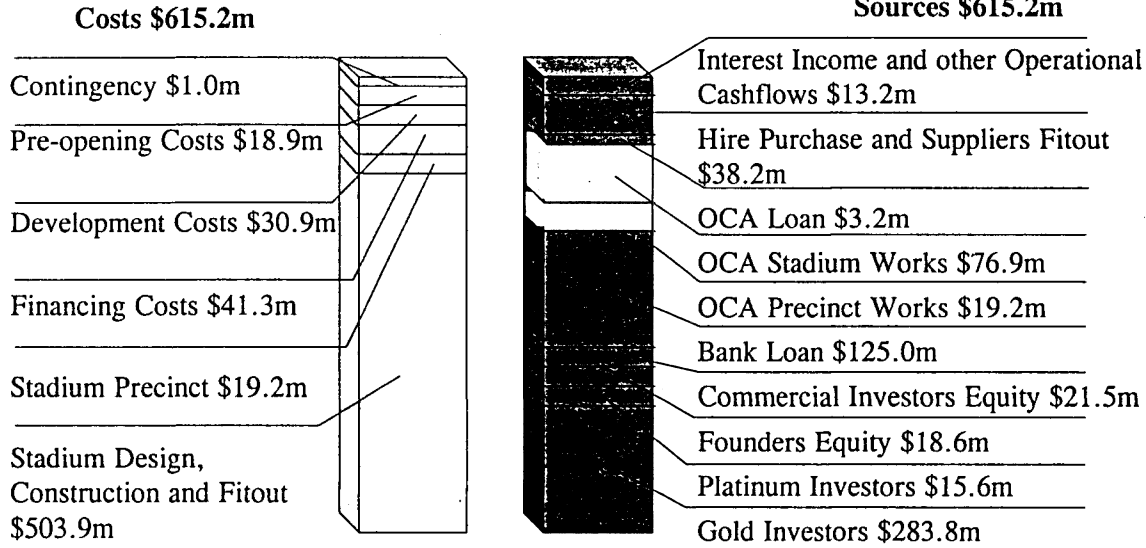
- with Gardner Merchant (Venues) Australia Pty Limited for food, beverage and catering services;
- with Coca-Cola Amatil for the rights to supply soft drinks;
- with Tooheys Pty Limited the rights to supply beer; and
- with Ticketek Pty Limited to provide ticketing services.

The agreements are generally for periods of 10 years or more with options to renew, but do not include the periods in which SOCOG has the use of the Stadium for the 2000 Olympic Games, Paralympic Games and test events. The contracts also require the various service providers to supply and install the fixtures, fittings and equipment which they require in the Stadium.

IX. FINANCING PLAN

The financing plan of the Stadium in 1996 was as follows:

Financing Plan



X. GOLD AND PLATINUM PACKAGES

The most substantial aspect of the financing plan was the raising of \$364.4 million through a public issue. It was an unusual public issue and in the end was extremely controversial.

SAG issued two prospectuses. The first was for 34 400 Gold Packages of \$10 000 each. The second was for 600 Platinum Packages of \$34 000 each. The issue was fully underwritten by four underwriters - Bain & Co Corporate Finance, ANZ Securities, Macquarie Underwriting and ABN AMRO. Of the funds raised \$65 million was payable to SOCOG in return for the Olympic rights which formed a component of the Gold and Platinum Packages. The net funds available from the Gold and Platinum Packages to fund the project would be \$299.4 million.

A Gold Package had three components:

- Olympic tickets - a guaranteed seat at no extra cost to each Olympic event in the Stadium including the opening and closing ceremonies, the track and field finals and the soccer final;
- Club membership - a membership of the Stadium Australia Club for 30 years entitling a member to entry to most sporting events at no cost, preferred booking rights for concerts and major international sporting events and access to members facilities such as lounges and dining areas;
- Equity investment - 1000 units in SAT stapled to 1000 units in SAM, the stapled security being listed on the Australian Stock Exchange.

A Platinum Package had three similar components. It guaranteed two seats at no extra cost to each Olympic event in the Stadium. The Platinum Club Membership also provided a car parking space at no extra cost. It involved no annual subscription. A Platinum Equity Investment comprised 2000 units in SAT stapled to 2000 units in SAM.

It is not uncommon for sporting venues to offer 'memberships' to the public. SAG's proposal to enhance the members' entitlements with rights derived from SOCOG to attend Olympic events in the Stadium was novel. It enabled SAG to raise more than half of the project cost from sports fans. It accessed a previously untapped source of funds. It made the difference between the Government paying the lion's share of the capital cost of the Stadium and paying a comparatively minor component of it.

In 1998 the various components were unbundled. Each Gold and Platinum Package holder was required to nominate a person to receive the Olympic tickets and a person to be the member of the Stadium Australia Club. The equity investment then traded separately on the Australian Stock Exchange.

The public issue was a failure. Less than half of the Gold Packages were subscribed for. The considerable shortfall was taken up by the underwriters, the underwritten funds were paid to OCA and construction of the Stadium proceeded

uninterrupted. Explanations for the failure of the public issue are many and varied. The components of a Package were novel and may have been unduly complex in the minds of potential investors. Secondly, SAG had not at the time contracted with any sporting groups to hire the Stadium and provide events; there was only an expectation that the Stadium would attract the largest of the football events held in Sydney. Third, the timing for the issue of the prospectuses did not go according to plan. It had been intended to issue the prospectuses in June 1996 immediately prior to the holding of the Olympic Games in Atlanta to capitalise on the then enthusiasm for Games events. As it turned out the prospectuses were issued some months later missing out on the hoped for Olympic-hype. Lastly, it may be that certain basic issues were overlooked in the preparatory research undertaken relating to the project - for example, it may have been overlooked that prospective Gold investors would not want to go to a sporting event on their own and would therefore require two packages at a cost of \$20 000, not one package of \$10 000.

XI. COMMERCIAL EQUITY

Approximately \$40 million of additional equity was committed to be subscribed by the founders of the project (Multiplex Constructions, Hambros Australia, Macquarie Corporate Finance and Obayashi Corporation) as well as by Gardner Merchant, Coca-Cola Amatil and Ogden IFC. The equity commitments were due to be subscribed on practical completion of Stage I of the project and in the interim were secured by bank issued Letter of Credit.

The business plan relied on by the equity investors and the Gold and Platinum Package holders was based primarily on revenues from corporate hospitality and Stadium Australia Club fees. Estimated sources of revenue at the time of the public issue were:¹⁴

• Corporate hospitality	41 per cent
• Stadium Australia Club fees	25 per cent
• Food and beverage	13 per cent
• Signage	10 per cent
• Event rental	6 per cent
• Merchandising	2 per cent
• Other	4 per cent

The business plan was based on an expectation of approximately 40 events per annum at the Stadium. As mentioned above, however, no hirers had been contracted to the Stadium at the time of the public issue. 1995 was the time of the News Corporation's sponsored Super League and the Rugby League Code in Australia was in turmoil. Code administrators were concentrating on survival

14 See Gold Package Prospectus.

rather than on any long term venue contracts. In any case SAG and its investors and financiers were confident that the hirers would follow and that the Stadium would quickly become Sydney's premier football venue. Their belief was based on the following:

- Sydney's population of approximately 3.8 million was sufficiently large to provide adequate demand for an 80 000 seat stadium;
- there were no other stadiums in Sydney with a seating capacity exceeding 45 000;
- the Stadium would provide a new and higher standard of quality to patrons; and
- the design was intended to optimise potential revenue from events.

In 1997 the lack of committed hirers, the failure of the public issue, the commensurately lower membership base, and the potentially lower revenues from corporate hospitality caused initial concern to SAG and its investors and financiers. Since then hirers have been committed, the memberships have been remarketed and 1999 has seen a number of large events held successfully at the Stadium.

XII. BANK DEBT

The primary debt funding for the project was a \$161 million construction loan facility provided by the ANZ Banking Group and ABN AMRO. It was first drawn down after the proceeds of the public float had been fully utilised in construction. The interest rate payable during construction was BBSY plus a margin of 1.25 per cent.

On practical completion of Stage I in March 1999 the Founders and commercial investors subscribed their equity and the bank debt reduced to approximately \$125 million. At that time the facility converted to a term facility of approximately 15 years with an interest rate of BBSY plus a margin of 1.5 per cent.

The construction and term debt facilities were secured by first ranking mortgages over SAT's lease of the Stadium.

Negotiations with SAG and the banks were complex. The 2000 Olympic Games was an immutable deadline and OCA required as much flexibility as possible to terminate the Stadium contractual arrangements if major problems were encountered in the design and construction of the Stadium. Such flexibility was, of course, inimical to the interests of the banks. In the end, the agreed framework was as follows: As the period available to the Banks to cure construction defaults was constrained by the timetable for the Olympic Games, the Banks agreed to short cure periods; in return, OCA agreed that if, as a result of a construction default it terminated the Project Agreement, it would pay the Banks 70 per cent of the debt outstanding and allow the Banks to recover the balance out of operating profits if OCA went on to complete construction of the

Stadium. In the operating phase, there are no such time constraints and the Banks are provided with lengthy periods in which to cure operating defaults; if, however, they are not cured, OCA has the right to terminate the Project Agreement and the lease without being liable to pay compensation to SAT or the Banks. Indeed, the termination arrangements in the delivery phase were even more complex than mentioned above. OCA, concerned that any construction default may become enmeshed in a tangle of litigation which at the practical level would preclude it from terminating the Project Agreement for reasons of default, required a right to terminate the Project Agreement at its discretion regardless of whether there was default or not. This, of course, was anathema to the equity investors and the Banks. It was, however, in the end incorporated in the Project Agreement on the basis that upon any exercise of such right to terminate, the Banks and investors and other contracting parties would be reimbursed in full including an allowance for loss of profits.

XIII. CONCLUSION

The Stadium Australia Project - or, the Olympic Stadium Project, as it may become known - is set to become the an Australian icon, like the Melbourne Cricket Ground.

The Government sought to attract innovative proposals from the private sector for the development and financing of the Stadium. It succeeded. SAG's proposal to combine Olympic rights, long-term members' entitlements and an equity investment, and to offer the combined package to sports fans in the form of a public issue accessed a previously untapped source of funds.

As a result, the Government was able to have the principal Olympic facility developed at minimal cost to it and the taxpayer. In addition, SAG (and not the Government) bears the ongoing business risk of the Stadium.

The Stadium as developed by SAG is undoubtedly a larger and more impressive facility than it would have been if it had been publicly funded. It is quite likely that, if it had been paying the capital cost, the Government would have decided on a facility with a capacity of 60 000 to 70 000 seats. Many more Australians will now be able to see the Olympic track and field events and the Opening and Closing Ceremonies than would otherwise have been possible.