



*... the buffalo is waking*

**SUBMISSION**

**Senate Economics  
References Committee**

**July 2011**

**Inquiry into Finance  
for Social Organisations**

**Address:**  
PO Box 112,  
Yackandandah Vic 3749

## 1. Introduction & Context

Mt Buffalo Community Enterprise was formed by a group of North-East based residents last year to investigate the feasibility of setting up a **community-owned enterprise** to take over the Mt Buffalo Chalet.

The Mt Buffalo Chalet is a 100 year old heritage building located in one of Victoria's most magnificent National Parks. It is a 96 room hotel perched on a cliff-top, commanding some of Australia's most spectacular vistas.



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Following the 2006 fires in the Alpine National Park, the Chalet closed. The lease has since reverted to the State Government. The Chalet has now been closed and vacant for over 4 years, with its future uncertain. Whilst structurally sound, the Chalet is deteriorating and remains at risk. More importantly, the Chalet is closed and not available to the people of Victoria and Australia to experience and enjoy.

## 2. MBCE Foundation

**Mt Buffalo Community Enterprise Pty Ltd.** was incorporated on 29 September 2010 at a meeting held at Mt Buffalo Chalet. We are a group of people from the Alpine Valleys and North East Victorian communities who are concerned about what happens at Mt Buffalo and in particular the Chalet.

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The foundation of MBCE is not motivated by profit or financial gain. What drives us is a belief in Mt Buffalo. We believe that the Mountain can have a vibrant, relevant and financially sustainable future. We believe that a community ownership model is the best way to achieve that. And we think that there are many other people from the towns and communities surrounding the mountain and from across Victoria that feel the same way about Mt Buffalo.

We decided to do something positive and develop a plan to preserve Mt Buffalo Chalet.

There are 17 Foundation shareholders of the company. Together, we pooled our resources and raised \$110,000 in equity capital in MBCE Pty. Ltd. We used this money to attract additional funds from the State Government and Social Traders to explore our proposal in detail.

The foundation shareholders come from towns and communities in the valleys around Mt Buffalo including Bright, Wangaratta, Wandiligong, Milawa, Yackandandah and Beechworth.

Our proposal is to issue a disclosure document so people from the North East and Alpine Valleys and from across Victoria and Australia will be able to apply to buy shares and take a direct stake in MBCE Pty. Ltd. We want people who care about Mt Buffalo to get on board.

Essentially, our proposal is to position MBCE as an altruistic or social investment as a means of raising capital for a preservation/refurbishment project.

We believe that a community ownership model is the best way to do that.

## **2. MBCE Constitution**

The MBCE Company Constitution commits it to distributing 51% of future profits back to a not-for-profit Mt Buffalo Community Foundation to be used for “social, cultural, community and environmental” benefit. The remaining 49% of profits would go to private equity holders.

Under the model we propose, we regard ourselves as being a form of community-owned social enterprise because our core goals are focused on delivering community and social and cultural outcomes.

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## 4. Our Vision for Mt Buffalo

Our Vision is for a contemporary, next generation preservation of the Chalet. A project that will breathe life back into the Chalet for the next 100 years. This Concept and Business Plans are to renovate the Chalet and set it up as an **exemplar eco-tourism /accommodation complex**.

Our aim is for a redevelopment that will protect the cultural, environmental and heritage values implicit in the Chalet and the Mountain, whilst restoring and updating the building and infrastructure.

The core elements of the MBCE Vision include:

- An upgraded Chalet, preserved for future generations to enjoy with a focus on the Mountain environment;
- A financially sustainable business operating model with broad-based ownership by the community;
- A separate Mt Buffalo Community Foundation that would receive 51% of future distributed profits (with the other 49% going to private shareholders);
- A mixed offering of facilities and accommodation to meet 21<sup>st</sup> century visitor expectations;
- Accessibility of the Mt Buffalo experience to a diverse range of people in the community;
- A remote low-emissions renewable energy system and environmentally sustainable design (ESD); and
- A new 'Mt Buffalo Interpretive Centre' to tell the story of 'The Buffalo' through pre and post European times.

## 4. Current Project Status

Concept Plans were developed by a consortium of consultants led by Jackson Clements Burrows Architects. The professional team includes Lovell Chen (heritage consultants) and Umow Lai (services engineers). The quantity surveys engaged by MBCE are Napier & Blakeley.

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We have also prepared a detailed Business Plan. This has been informed by a detailed Opportunity Assessment and Market Overview of the proposal that was undertaken by specialist hospitality/tourism consultants Deloitte's THL. The Business Plan addresses capital costs, operating and cash flow forecasts and the balance sheet outlook and set out all MBCEs underlying business assumptions.

MBCE members formally adopted the Draft Business Plan at a Members Meeting held at Yackandandah CFA Station on 19 May 2011.

The Concept Plans and Business Plan, if supported, would involve a significant capital investment by the State Government, MBCE Pty Ltd and the Federal Government. The Plans have been submitted to the State Government and are being considered.

## 5. What is a Community Enterprise?

The notion of being a commercial and being a community organisation are generally considered as being diametrically opposed concepts. However, we believe the constitution of MBCE Pty. Ltd. makes us unquestionably motivated by the delivery of social outcomes, whilst recognising and respecting the legitimate role of the profit motive in the raising of private capital.

A 'community enterprise' is an organisation that defines its mission and purpose not just in terms of a financial return, but also in terms of making a positive impact on social, cultural, environmental and heritage goals. Being an enterprise, it must be a trading organisation and be financially self-sustainable.

However, making profit is not what defines it or is its sole goal. It's how it uses the profit that counts.

Despite this, the existence of a profit motive and a profit outcome does not, of itself, eliminate the possibility of an organisation being socially or community motivated.

Eventually, if the Mt Buffalo proposal succeeds, our Enterprise (MBCE Pty. Ltd.) will have a for-profit operating company to run the businesses of the Enterprise. It will also have a separate not-for-profit **Mt Buffalo Community Foundation**. The Foundation is proposed to own a 51% equity stake in the operating company.

The Foundation will conduct and sponsor a range of social, cultural, educational, environmental programs.

51% of future profits will be distributed to the Community Foundation, with the other 49% going to shareholders/investors.

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### **SUBMISSION:**

We submit that:

- ✓ Federal and Victoria Government policy frameworks regard being 'not-for-profit' as a pre-condition for being accepted as being a legitimate 'community enterprise' or 'social enterprise'.
- ✓ This is evidenced in eligibility criteria for a range of Government funding programs requiring applicants to be 'not-for-profit' organisations (including the RDAF, RGF and State programs).
- ✓ The underlying public policy premise/assumption for excluding 'for-profit' entities is that the notion profit (of itself) and social, community and cultural goals are mutually exclusive concepts.
- ✓ It assumes that an organisation that is 'for-profit' cannot possibly be primarily motivated by social, community, cultural or environmental goals.
- ✓ We consider that these assumptions are flawed.
- ✓ These assumptions are akin to the treatment of the notion of profit as 'evil' in regard to the pursuit of social, community and public good.
- ✓ It fails to recognise the fact that profit plays a legitimate role as the price of private capital.
- ✓ By treating 'not-for-profit' status and being a socially motivated organisation as synonymous, this conspires to largely eliminate the potential for socially motivated organisations to access and raise private capital.
- ✓ In turn, this has the effect of making – by definition – the vast majority of socially-motivated organisations forever dependent on government grants and philanthropy.
- ✓ Despite the widespread current rhetoric by a range of governments about growing a robust social enterprise sector in Australia, this prevailing public policy framework will limit the sector to continuing in its present not-for-profit dominated culture and hand-out reliant position.
- ✓ These policy parameters put the social enterprise sector in Australia at risk of becoming a **misnomer**: it is at risk of becoming a sector dominated by social programs (valid, worthy and well-motivated as they may be) and social interventions dressed up as social enterprises in order to access government funding programs.

## 6. Private Capital Raising- ‘Social Investors’

A core part of the MBCE Vision is the establishment of a company with a broad-based ownership structure. Our goal is to create a company that operates the Mt Buffalo Chalet under a genuine community ownership structure. We envisage 5,000 to 10,000 shareholders/members with small equity stakes ranging from \$1,000 to \$10,000 each. Each member would take a real ownership stake in and feel part of an exciting community-driven project to preserve a much-loved asset.

To achieve this, we have proposed a public equity raising process. We would raise the private share of the capital required to refurbish the Mt Buffalo Chalet through a public equity raising.

Our intent was to issue a disclosure document (prospectus or offer information statement) to raise in the vicinity of \$6-8 million in private equity.

The Business Plan (and any disclosure document) would position any investment in MBCE as a ‘**social**’ or ‘**altruistic**’ investment. This would involve positioning an investment not as a donation. We propose to position it as an investment with a modest return akin roughly to cash rates of return.

Mt Buffalo Chalet is a much loved and treasured heritage asset that is valued by the community. As a commercial property, it has a clear and well documented history of commercial marginality and stress. There is no question of this property ever being positioned as a mainstream financial or commercially viable investment (ie; where the maximisation of financial return is the paramount goal). The scale of capital investment required, the aged and heritage nature of the buildings, its sub-alpine environment and sole destination status in a National Park and the fact that the property is not connected to the national power grid all conspire to undermine and erode the potential for commercial returns.

Yet, despite these commercial limitations, we are confident of the existence of a social investment market that would be prepared to invest in MBCE with their eyes open. Our proposal is based on assumption that there exists a cohort of ‘social investors’ who will willingly invest a small component of their total discretionary investment funds in a project that they adjudge as delivering a form of ‘**social or community good**’.

In so doing, we do not consider that this cohort is the same as the philanthropic sector who, in general terms, are prepared to donate funds to projects for public/social good. Rather we see the social investor as being more of a mainstream, community minded and motivated person who wants to make a small investment in a community project.

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## 7. ASIC – Regulatory Guide 170

### ***2 Year Limit on Forward-Looking Financial Information:***

We have been advised by ASIC that, based on RG170 issued by ASIC, that MBCE cannot issue a disclosure document with financial projections/forecasts of more than 2 years.

In this respect, it should be noted that the project proposal we have submitted to the Government has the following features:

- ✓ 30 month planning and design phase; and
- ✓ 4 year operational ramp-up period to full operational capacity and stabilised occupancy rates.

This means that, in the opinion of the directors:

- ✓ the full predicted operational potential that is embodied in the MBCE proposal will not be fully realised until year 6 of our Business Plan; and
- ✓ a full and true picture of what the MBCE business and operational model is expected to look like cannot be accurately portrayed and communicated in a disclosure document containing forward-looking financial information with a 2 year outlook.

In essence, this means that MBCE has 2 choices in this matter:

1. Issue a disclosure document with 2 years of forward-looking financial information only. Such financial information, being inside the 30 month planning and construct period, would only include the large cash flows associated with the capital expenditure plan and relatively minor operating statement outcomes. Such a picture in a document purporting to be a 'disclosure' document would bear little relation to the actual operating outcomes of the proposed business. In effect, it risks becoming a misleading 'non-disclosure' document.
2. Not issue a public disclosure document at all and seek to raise the necessary equity capital through an offer pitched to 'sophisticated' private investors (as defined under the Corporations Act) only. In essence, this path closes off the potential to make the investment offer to a wider (retail market) community and hence achieve the desired broad-based ownership structure.

In the current opinion of directors, to issue a disclosure document with 2 years of forward-looking financial information could be regarded as simply misleading. Such a document would not contain any operating information or offer any insights about predicted operating outcomes for the company under a predicted 'normal' or stabilised trading year (except in a verbal/descriptive sense). We believe it would lack any credibility in the eyes of an average common-sense reader.

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We understand that a possible rationale for ASIC taking such a rigid regulatory position on disclosure reflects its role as 'defender' of the retail investor's rights. It could be observed that the regulatory regime also reflects recent events in financial markets and, in particular, events associated with the GFC.

We understand the need for strong regulatory oversight and different levels of review for different classes of investor.

However, we argue that, in seeking to protect the rights of small retail investors, ASIC (through RG 170 and its interpretation), is effectively disqualifying retail investors from ever seeing or having an opportunity to invest in quality and worthwhile projects such as the preservation of Mt Buffalo Chalet as MBCE proposes to do.

Further, we argue that this is tantamount to treating retail investors as too ignorant to make informed choices and decisions on their own part whereas 'sophisticated' investors are able to make such choices. This is therefore, in a manner of speaking, discriminatory against small retail investors.

#### **SUBMISSION:**

We submit that:

- ✓ The ASIC regime does not appear to contemplate or recognise any rightful place in the Corporations Act environment for organisations which are motivated by social goals.
- ✓ RG 170 is overly restrictive in terms of the 2 year limitation it applies to forward-looking financial information. This does not support accurate, informative disclosure.
- ✓ RG 170 is unfair in that it effectively discriminates against small retail investors, whilst pretending to defend their rights.

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