SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL ON THE FRANKSTON CENTRAL ACTIVITY DISTRICT DEVELOPMENT

REPORT

March 2002

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MEMBERSHIP

The Hon. A.R. Brideson, M.L.C., Chairman

The Hon. R.M. Hallam, M.L.C., Deputy Chairman

The Hon. G.R. Craige, M.L.C.

STAFF

Mr Matthew Tricarico, Secretary

Ms Sarah Davey, Research Officer
SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Select Committee finds that a breach of Section 77 of the Local Government Act 1989 occurred, as confidential details of the scores of the two bidders (which had been accessible only to the Councillors and members of the Working Party — all bound by confidentiality requirements) were published in the Frankston Independent on 2 October 2001.

The Select Committee considers that a further breach of Section 77 of the Local Government Act 1989 may have occurred. This breach relates to the circumstances leading to the eleventh hour changes submitted by Gandel Retail Trust to materially alter the company’s original tender. The evidence presented to the Select Committee indicates that such a breach is likely to have occurred during the Working Party’s presentation to the Councillors on 26 September 2001, between the coffee break taken at 3.30 p.m. and the conclusion of the briefing at 5.00 p.m.

The Select Committee also finds from the evidence of three Councillors that a third breach of confidentiality was most likely to have occurred. The Select Committee accepts that a meeting was organised with a party not privy to the Frankston Central Activity District Development process indicating that the confidentiality of the process was breached.

The Select Committee recommends that an investigation be undertaken by the Office of Local Government into the process followed by the Frankston City Council in the CAD Development negotiations. Specifically, the Select Committee’s findings of one unequivocal breach of the Local Government Act 1989, as well as the likelihood of other breaches, need to be investigated by the Office of Local Government with a view to establishing the identity of the person or persons responsible for the breaches.

Should the Office of Local Government concur with the Select Committee’s findings, and the person or persons responsible be identified, the penalties attached to breaches of Section 77 of the Local Government Act 1989 should then be invoked.
REPORT

The Select Committee on the Frankston Central Activity District Development has the honour to report as follows:

On Wednesday, 17 October 2001, the Legislative Council adopted the following Resolution:

a. That a Select Committee of five members be appointed to enquire into and report upon the process followed by the Frankston City Council in its consideration of the proposed construction and development of a multi-million dollar commercial facility in the Frankston Central Activity District, including allegations made in both newspaper reports and the Victorian Parliament on matters related to this issue.

b. That the Committee shall consist of two members nominated by the Leader of the Government, two members nominated by the Leader of the Opposition and one member nominated by the Leader of the National Party.

c. That the members shall be appointed by lodgement of the names with the President by the Leaders no later than 4.00 p.m. on Thursday, 18 October 2001.

d. That the first meeting of the Committee shall be held at 10.30 a.m. on Friday, 19 October 2001.

e. That the Committee may proceed to the despatch of business not withstanding that all members have not been appointed and notwithstanding any vacancy.

f. That the Committee shall elect a Deputy Chairman to act as Chairman at any time when the Chairman is not present at a meeting of the Committee.

g. That three members of the Committee shall constitute a quorum.

h. That the Committee may send for persons, papers and records.

i. That the Committee may authorise the publication of any evidence taken by it in public and any documents presented to it.

j. That reports of the Committee may be presented to the Council from time to time and that the Committee present its final report to the Council on or before 1 March 2002.

k. That the presentation of a report or an interim report of the Committee shall not be deemed to terminate the Committee's appointment, powers or functions.
I. That the Committee shall, unless it otherwise resolves, take all evidence in public and may otherwise sit in public at anytime if it so decides.

m. That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders and practice of the Council, shall have effect notwithstanding anything contained in the Standing Orders.

In accordance with paragraph (c) of the Resolution, the Leader of the Opposition lodged with Mr President the names of the Honourables A.R. Brideson and G.R. Craige, and the Leader of the National Party lodged the name of the Honourable R.M. Hallam for appointment to the Committee. No nominations were received from the Leader of the Government by the time specified in paragraph (c) of the Resolution.

Pursuant to the Resolution of the Council, the Select Committee held its first meeting on Friday, 19 October 2001. At that meeting the Honourable A.R. Brideson was elected Chairman and the Honourable R.M. Hallam was elected Deputy Chairman.

The Select Committee placed an advertisement on 22 October 2001 announcing the commencement of the Inquiry and calling for submissions on its Terms of Reference. A copy of this advertisement appears at Appendix A.

Since its appointment, the Select Committee has met on 10 occasions.

The Committee held public hearings on 7 days and heard evidence from the following witnesses:

- Mr Geoffrey Harry, Partner, PricewaterhouseCoopers.
- Mr Michael Shatter, Senior Manager, PricewaterhouseCoopers.
- Mr Jon Edwards, Chief Executive Officer, City of Frankston.
- Mr Bernard McNamara, Planning and Development Manager, Gandel Group of Companies.
- Cr Cathy Wilson, Frankston City Council.
- Cr Vicki McClelland, Frankston City Council.
- Cr Dianne Fuller, Frankston City Council.
• Cr David Asker, Frankston City Council.
• Cr William Parkin, Frankston City Council.
• Cr Barry Priestly, Frankston City Council.
• Mr Rogan Ward, Managing Director, Commercial Property Services Pty Ltd.

The Select Committee received 3 submissions on its Inquiry and a list of those appears at Appendix B.

INTRODUCTION

The Select Committee on the Frankston Central Activity District Development was established in response to allegations made in newspaper reports and the Victorian Parliament regarding the conduct of certain individuals and the process followed by the Frankston City Council in its consideration of the proposed construction and development of a multi-million dollar commercial facility in the Frankston Central Activity District.

On 2 October 2001, the Frankston Independent, under the heading “Civic Centre doubt as prime site talks reopen,” published details from a confidential briefing for Frankston City Councillors (see Appendix C). The briefing was to inform Councillors of how the two short-listed parties bidding for the Central Activity District Development rated against a set of criteria. It was on the basis of these criteria that a recommendation for a preferred developer was to be presented to the Councillors at the conclusion of the briefing. According to the article, “The process for the multi-million dollar redevelopment of prime Frankston sites appeared to go haywire as councillors were briefed.” It went on to state that the meeting went into “disarray” and the Councillors “refused to follow the working party’s advice . . .” The confidential scores allocated to the two bidding parties were also published (although one of the figures printed was incorrect).

On 10 October 2001, accusations were made in the Legislative Assembly by Mr Gary Rowe, MP, that the Mayor of the City of Frankston, Cr Mark Conroy, was “corrupt.” It was alleged that during the confidential briefing of Councillors concerning the Central Activity District Development, it became obvious that a particular developer was to be recommended. At this point, one of the Councillors allegedly left the room to make a mobile telephone call.
Shortly afterwards, a telephone call was made to one of the consultants assisting the Working Party, Mr Bill Kerr (Director, Deloitte Touche Tohmatsu), from the lower ranked developer indicating an alteration to its bid.

Section 77 of the *Local Government Act 1989* relates to improper use of information, and provides that:

1. A person who is, or has been, a Councillor or a member of a Council committee must not make improper use of any information acquired as a Councillor or member--
   
   (a) to gain, or to attempt to gain, directly or indirectly, a pecuniary advantage for himself or herself or for any other person; or

   (b) to harm, or to attempt to harm, the Council.
   
   Penalty: For a first offence: 20 penalty units;
   For a second or subsequent offence: imprisonment for 3 months.

2. A person who is, or has been, a Councillor or a member of a Council committee must not release information that the person knows, or should reasonably know, is information--

   (a) that is confidential to the Council; and

   (b) that the Council wishes to keep confidential.
   
   Penalty: For a first offence: 20 penalty units;
   For a second or subsequent offence: imprisonment for 3 months.

The investigation of two alleged breaches of confidentiality was central to the Select Committee’s task.

Firstly, the Select Committee undertook to examine how confidential details of the process came to be published in the *Frankston Independent* newspaper.

Secondly, the Select Committee undertook to investigate claims that confidential information was obtained by one of the bidding parties.

The Select Committee needed to establish whether evidence existed to support the allegations and, if so, how and why the confidential nature of the process was undermined.
BACKGROUND

In line with its Community Plan 2001-2004, Frankston City Council set about fulfilling its commitment to “develop and reinforce Frankston City’s role as the major commercial, business and tourism focal point of the south-eastern region for employment growth and community prosperity”. Its stated strategy in achieving this was to “facilitate the introduction of a quality and diverse retail mix in the Frankston Central Activities District (CAD), and to “examine options for regenerating the southern end of the CAD, possibly with a tourism focus to complement the Arts Centre and foreshore”.

In June 1999, Frankston City Council authorized its Chief Executive Officer to conduct negotiations with interested parties regarding the possible future development of three Council-owned commercial sites within the Frankston CAD – the North of Beach Street Car Park site; Sherlock and Hay Car Park site; and the former Police and Law Courts site (See Maps 1 and 2).

In September 2000, the Council sought (by way of formal advertisement) Expressions of Interest for the development of those sites. This document stated:

Through important strategic work undertaken over the last few years, Council has made a commitment to plan, promote, implement and manage Frankston's future as a vibrant business, tourism and service centre; and as a great place to live. The Frankston Project (the "Frankston Project"), partly funded by the State Government of Victoria as part of their Pride of Place program, was prepared by HASSELL and adopted by Council in 1999. This provides the framework for development in the Central Activities District (CAD) and has instigated a number of exciting projects in Frankston. As part of realising the vision developed by the Frankston Project, and with the aim to strengthen and enhance the role of the CAD within the municipality and the region, Council is making available for development, by purchase or lease, three commercial sites strategically located within the Frankston CAD. This unique development opportunity comprises the following sites of approximate area:

Site 1 “North of Beach Street” site, Frankston:
34,000 sqm (3.4 ha)

Site 2 “Sherlock & Hay” site, Young Street, Frankston:
5,471 sqm (0.547 ha)

Site 3 “Former Police & Law Courts Site, Davey/Young/Playne Streets, Frankston:
4,275 sqm (0.427 ha)
Council is seeking for a balance of development to occur between the northern and southern ends of the CAD. Sites 2 and 3 are being made available for development to ensure that economic activity is generated at the southern end of the CAD, in addition to activity on Site 1 at the northern end.

The document further stated:

**Attributes of the Frankston CAD**
The Frankston CAD is one of Melbourne's major suburban activity centres. It contains a total floor space of around 220,000 square metres, including around 110,000 square metres of retail floor space. The Frankston CAD is the largest activity centre in the southern suburban and Mornington Peninsula region of metropolitan Melbourne, and its only regional activity centre. Frankston is an important regional public transport node and modal interchange, at the terminus of the Melbourne-Frankston railway line. Some 2 million passengers use Frankston Rail Station each year.

The Frankston CAD performs an important role as a higher order activity centre serving a broad region which extends well beyond the boundaries of Frankston City. The CAD contains the region's only department store (Myer) and Target discount department store. Total Trade Area extends from Edithvale in the north, Cranbourne South in the east, and Portsea to the south. The trade area serves a large and growing population of approximately 267,000 persons, which is forecast to increase steadily to around 312,000 persons by 2011. Retail expenditure within the Total Trade Area is projected to increase, in real terms, from its current level of around $1.81 billion to around $2.25 billion over the same period.

The Expression of Interest document also contained guidelines for the Frankston (CAD) Development. These are as follows:

**FRANKSTON CAD DEVELOPMENT GUIDELINES**

**Objectives**

Council's principal objective for the CAD, as stated in its "Municipal Strategic Statement", is:

*To reinforce the role of the CAD as a regional activity centre and to enhance its image by building on its unique bayside location.*

Council's strategies for the CAD include a range of activities that will facilitate appropriate development in the area, including housing, retail, tourist, business, entertainment and associated uses, acknowledging the bayside location, upgrading of public areas and pedestrian links. Specifically, Council's preferred development uses for the sites are:

**Site 1 North of Beach Street Site -**

RETAIL
Site 2 Sherlock and Hay Site -
OFFICE /RETAIL
Site 3 Former Police & Law Courts Site -
HOTEL/SERVICED APARTMENT/RESIDENTIAL
ACCOMMODATION/RETAIL

Other uses proposed for the sites would also be considered.

It should be noted however that developers may wish to develop an alternative site(s) in the southern end of the CAD to Sites 2 and 3.

Development Imperatives
Council has development imperatives for the sites which must be satisfied in order to achieve its objectives for the CAD:

- Development of the north of Beach Street site is the primary focus of this opportunity to strengthen and enhance the role of the CAD. Council wishes to see a significant level of investment in the site.
- Preference will be given to tenderers who can also demonstrate the ability to provide an economic benefit to the south end of the CAD (i.e. south of Wells Street). This may be by a commitment to develop an alternative site which is located in this area in addition to the north of Beach Street site, or to develop either or both of the Council owned sites (Sites 2 and 3). Any development must be of appropriate scale to generate a significant economic benefit to the area.
- The development south of Wells Street must occur prior to, or concurrently with, the development on the north of Beach Street site.
- All existing public car-parking spaces must be replaced either on site (preferably), or within reasonable proximity to their existing location, at the developer’s expense, and made available for public use. Replacement of public car parking spaces must occur in addition to the provision of those car spaces required by the intended development.
- Council will be responsible for management of the public car parking spaces. The public car parking spaces will be either transferred into Council ownership at no cost to Council, or managed by Council for no management fee.
- Preference will be given to tenderers who are able to develop the sites in accordance with the Council’s objectives for urban design, and other Council policies either explicitly referred to in Council’s documentation for this Expression of Interest, or otherwise endorsed by Council.
- Preference will be given to tenderers who promote in their development of the sites innovation and design excellence.

A period of six weeks was allowed for the receipt of expressions of interest.

Six expressions of interest were received by the due date of 3 November 2000 and, of those, all but one expressed an interest in developing one or more of the Council sites.
The five parties that registered an interest in developing all of the sites were invited to an interview with Council officers on 5 December 2000.

Prior to the interviews, the Council provided each of the five parties a list of questions to which written responses were to be delivered by 29 November 2000. These questions concerned information required as part of the expression of interest but not adequately supplied in the original submissions.

Prior to the interviews, one of the parties withdrew from the expression of interest process, resulting in four parties being interviewed.

During the expression of interest process, concerns regarding confidentiality and the probity of the process were raised by three of the four interviewed parties because of the magnitude of the proposed developments, the competitive advantages sought by the respondents in their proposals and the competition among the respondents for major tenants for the redevelopment of the sites.

The Council officers’ assessment was that confidentiality would become even more critical in the second stage of the process, particularly as more details about each of the proposals would be required from the short-listed parties.

The Council’s solicitors, Maddock Lonie and Chisholm, advised that it was critical that any process to select a preferred developer for such prominent community-owned assets, should not only be fair, but should be seen to be fair to all parties. Council officers therefore thought it appropriate for Council to adopt a process by which the details of each party’s proposals for the development of the Frankston CAD be restricted to a small working party, pending presentation of the final proposals to Council.

Although the final decision concerning the selection of a preferred developer rested solely with the Frankston City Councillors themselves, Maddock Lonie and Chisholm recommended that, during the negotiation process, it was desirable that the Working Party exclude Councillors for numerous reasons, including:

- A collateral contract could exist between Council and each of the short-listed parties. Such contract could entitle an unsuccessful bidder to take action against Council if it
appeared that any person had breached confidentiality during negotiations;

- Non-involvement of Councillors in the negotiation phase of the process would avoid any perceived or real conflict of interest; and

- It was not uncommon for a Councillor or other policy-making body to remove itself collectively and individually from the detail of negotiating with each party. This also had the benefit of protecting Councillors from potentially being harassed by bidders during the negotiation process.

Following the interview stage, three of the four parties were short-listed and invited to participate in the next stage of the process.

On 18 December 2000, the Council held a Special Meeting (closed to the public in accordance with Section 89(2) of the Local Government Act 1989) and resolved that a Working Party be established to consider the Expressions of Interest. The Council discussed options for procedures for dealing with the second stage of the process with the short-listed parties and decided to embark on a concurrent negotiation process with the remaining parties.

It was considered that the Working Party would conduct this process which would allow greater flexibility for Council to address the individual elements of each proposal. Formal resolutions of the Council carried at this meeting included —

(a) That Council confirm the composition of the Working Party.
(b) That Council authorise the Working Party to proceed with negotiations with the short-listed parties.
(c) That Council appoint a Probity Auditor to oversee the process and report regularly to the Council on the progress of the process.

In accordance with the Council’s Resolution, the Working Party was to comprise:

- Jon Edwards, Chief Executive Officer, Frankston City Council;
- Peter Fitchett, General Manager, Market Development and Planning, Frankston City Council;
- Steve Dalton, General Manager, Corporate and Governance Services, Frankston City Council;
- George Modrich, General Manager, FrankCorp;
- Lidia Orsini, Senior Strategic Planner, Frankston City Council;
• Graeme Parton, Director, Pinnacle Property Group; and
• Andrew Williams, Consultant, Pinnacle Property Group.

In a written submission to the Select Committee, Mr Jon Edwards, Chief Executive Officer, Frankston City Council, noted that “In due course, the Working Party became – for all practical purposes – the Corporate Management Team [himself, Fitchett, Dalton and Modrich] and the Senior Strategic Planner.”

Mr Edwards also stated in his submission that the Council Resolution of 18 December 2000 was intended to vest the Working Party with the responsibility for conducting the concurrent negotiation process. The Working Party was to report to the Council at the end of the process, and the Council was to then decide whether any (and, if so, which) of the bids were to be accepted.

On 20 December 2000, the Council sent a letter to the three parties bidding for the project that outlined the rules of the negotiation process. These “rules of participation” outlined the following:

• Probity – to ensure the probity of the negotiation process, the Council would appoint a probity auditor;
• Confidentiality – a condition of the invitation was that any matters discussed in relation to the process were to be confidential;
• Canvassing – approaching, or requesting anyone to approach, any Councillor, member of the Council’s staff, or consultant engaged by the Council to solicit support for a particular proposal or otherwise seeking to influence the outcome of the negotiation process would not be permitted; and
• Collusion – the short-listed party, its employees or consultants were not to enter into any agreement, arrangement or understanding with any other short-listed party or any industry association concerning the preparation of an offer for the purchase of the properties or any of them without the prior consent of the Council.

Mr Edwards conveyed this information to the Mayor and Frankston City Councillors in a memorandum dated 5 March 2001. A copy of the memorandum appears at Appendix D.

According to page 4 of the memorandum, the terms of engagement were executed by the three parties.
Mr Edwards submitted to the Select Committee that the Council wished to engage a major accounting firm to act as a probity auditor and it was crucial that a firm be engaged that did not have a conflict of interest, i.e., had not worked for any of the three short-listed parties. According to Mr Edwards, both himself and the Council’s lawyers made a number of telephone calls to ascertain which of the major accounting firms working in probity auditing did not have a conflict. PricewaterhouseCoopers was found to meet this requirement and was, therefore, approached to be engaged as probity auditor.

On 17 January 2001, PricewaterhouseCoopers sent a letter of engagement to Mr Edwards agreeing to act as probity auditor and advisors to the Frankston City Council on the Frankston CAD Development (see Appendix E).

In his evidence to the Select Committee, Mr Geoff Harry of PricewaterhouseCoopers described the role of a probity auditor as someone who could provide an opinion on the process being pursued in choosing a developer and to ensure that due process was followed. Mr Harry confirmed that it was common for probity auditors to be appointed for large property development projects such as the one in question.

Mr Harry told the Select Committee that Frankston City Council had developed specific rules relating to the probity of the process and, as the probity auditor, his work was concerned with compliance with those rules, as well as the broader concept of probity. Like any audit, the probity auditor was required to provide an opinion at the end of the process.

Mr Harry informed the Select Committee that his firm also provided Frankston City Council with probity advisory work in relation to this project. This amounted to advice or guidance to Council on how to deal with a matter if a probity issue arose during the course of the negotiation process.

In Mr Edwards’ memorandum dated 5 March 2001 (which appears at Appendix D), Mr Edwards outlined to the Mayor and Councillors how a Councillor was to determine whether a conflict of interest existed and urged the recipients to formally declare such a conflict.
Following the circulation of this memorandum, the Mayor, Cr Mark Conroy, in a letter dated 27 March 2001, declared that he may have such a conflict (see Appendix F). The letter stated:

On 16 November 2000 I conducted a fund raising function for the Australian Labor Party at Mount Eliza for the Federal seat of Dunkley. I arranged the function in my capacity as the endorsed candidate.

In addition to 65 other guests, the function was attended by representatives of the Gandel Retail trust as well as Mr Colin Stubbs and Mr Don Simpson.

I have suspended any contact with these parties until the CAD redevelopment proposals have been finally determined.

Mr Edwards stated in his submission that the Council sought legal advice over this matter. Maddock Lonie and Chisholm, the law firm acting for Frankston City Council, advised that no conflict of interest existed.

Two of the three parties that had submitted an Expression of Interest completed negotiations with the Working Party and submitted bids. The two parties were Gandel Retail Trust (“Gandel”) and the Harbour City Consortium (Grocon Pty Ltd and Proclan Pty Ltd – “Grocon”).

On 22 August 2001, representatives of both companies briefed the Council on the design concepts. These design concepts were then put on public display from 27 August 2001 until 14 September 2001.

On 26 September 2001, a briefing was held at which the Working Party presented to the Councillors all elements of the proposals of the two bidders for the Frankston (CAD) Development (including the commercial aspects). The briefing was held in the Acacia Room of the Frankston Civic Centre and commenced at approximately 1.40 p.m. The Councillors in attendance were:

- Councillor Mark Conroy – Mayor/Chairman;
- Councillor Cathy Wilson – Deputy Mayor;
- Councillor Vicki McClelland;
- Councillor David Asker;
- Councillor Dianne Fuller; and
- Councillor Bill Parkin (who arrived at the meeting at approximately 4.50 p.m.)
Councillor Barry Priestly did not attend the briefing as he was attending a conference in Western Australia.

Also in attendance were:

- Jon Edwards – Chief Executive Officer, Frankston City Council;
- Peter Fitchett – General Manager, Market Development and Planning, Frankston City Council;
- Stephen Dalton – General Manager, Corporate and Governance Services, Frankston City Council;
- Linda Orsini – Senior Strategic Planner, Frankston City Council;
- Bill Kerr – Director, Deloitte Touche Tohmatsu;
- Graeme Parton – Director, Pinnacle Property Group;
- Andrew Williams – Senior Consultant, Pinnacle Property Group;
- Guy O’Connor – Partner, Maddock Lonie and Chisholm;
- Marine Nincevic – Senior Associate, Maddock Lonie and Chisholm;
- James Woodhouse – Manager, Hams Sharley;
- Peter Hunkin – Director-Transport, Hyder Consultant; and
- Michael Shatter – Senior Manager, PricewaterhouseCoopers.

The presentation included the Working Party’s numerical evaluation of each bid against different criteria. Each bid had an overall score at the end: out of a potential score of 1000 points, the Grocon bid scored 768.2 points and the Gandel bid scored 654.7 points.

The Working Party presentation included a recommendation that neither bid should be accepted, but that the Council should enter into a new separate negotiation process with one of the bidders — Grocon — for a 30 day period. In summary, it stated that “Risk analysis indicates that we can achieve a better result for Frankston City.”

At the conclusion of the presentation, discussions continued between the Working Party and the Councillors as to whether this recommendation should be endorsed. By the end of the discussion, at 5.35 p.m. approximately, the matter remained unresolved. Instead, the Councillors decided to defer the matter to their next Council Meeting scheduled for the following Monday evening, 1 October 2000.
In evidence to the Select Committee, Mr Edwards stated that almost immediately after the briefing and discussions concluded, he was called out of the Acacia Room by Mr Kerr. Mr Kerr advised him that he had received a telephone call from Mr Bernard McNamara of Gandel. In evidence provided to the Select Committee, it appears that this call was received at 5.16 p.m. Mr McNamara advised Mr Kerr that Gandel’s Board had resolved to execute the contract of sale to purchase the land north of Beach Street. Mr Edwards gave evidence to the Select Committee indicating that Gandel had previously resisted the execution of this contract. The Select Committee heard that Mr McNamara also advised Mr Kerr that Gandel had deleted a condition in the contract that it had (according to Mr Edwards) previously insisted upon. Mr O’Connor and Ms Nincevic were also present when Mr Kerr informed Mr Edwards of this development. This condition related to a requirement of 90 days to determine the commercial viability of the Central Park proposal and to negotiate the commercial terms and conditions for the civic centre at Central Park.

An email was subsequently sent by Mr McNamara to Ms Orsini (received at 5.34 p.m.) confirming the advice Mr Kerr had received by telephone.

Following discussions between Mr Edwards, Mr Kerr, Mr O’Connor and Ms Nincevic, and Mr Shatter, it was decided to urgently seek Queen’s Counsel advice as to whether the modified Gandel bid could be considered by the Council. A conference call was made to Mr Peter Hayes QC, who advised that Frankston Council should consider the altered Gandel bid. According to Mr Edwards, the Council’s solicitors, Mr O’Connor and Ms Nincevic, were of the same view.

Telephone records of appropriate Council landline telephones and Council-issued mobile telephones, were sought from Mr Edwards by the Select Committee to determine whether any telephone calls were made to Gandel during the presentation on 26 September. Those records revealed no telephone calls were made by Councillors, Council staff or members of the Working Party from Council telephones to Gandel on the afternoon in question. The Select Committee cannot rule out, however, that a call could have been made on a personal (mobile) telephone to Gandel during the presentation.
In evidence to the Select Committee, Cr Vicki McClelland stated that she had seen Cr Mark Conroy in his Mayoral Office at approximately 3.30 p.m. and that he was using a mobile telephone. She told the Select Committee:

Well, I saw him — I saw Mark Conroy on the phone — on the mobile phone. It did not occur to me at the time what he was doing — he could have been ringing anybody; I don’t know. What caught my eye was the fact that he closed his door to the mayor’s office. He never does that when I am around. If there are a couple of other councillors he might, but certainly not me. Then when I found out that Bill Kerr had had this phone call, when I read the memo, I thought, Oh — because Mark was so for Gandel. It was blatantly obvious during the whole briefing he was — and during our breaks. He almost convinced me.

[Transcript of Evidence, p. 98].

Cr Conroy’s Council-issued mobile telephone records of 26 September 2001 indicated no such telephone call was made.

Cr McClelland also submitted to the Select Committee that during the presentation, Cr Conroy was “very upset . . . about what was going on during the briefing. He was very agitated, very stressed . . .” [Transcript of Evidence, p. 91].

In their evidence to the Select Committee, four of the other Councillors who had attended the presentation made similar comments about Cr Conroy’s behaviour at the Working Party briefing. Evidence from a number of Councillors clearly indicated Cr Conroy had a pre-determined preference for Gandel to be selected as the preferred developer.

Cr Wilson told the Select Committee that Cr Conroy was “. . . clearly agitated with the Working Party’s recommendation” [Transcript of Evidence, p. 74]. She also submitted that “Well, Mark is vocal. He is animated and I could tell he was not happy with Grocon outscoring Gandel . . .” [Transcript of Evidence, p. 75].

In her evidence, Cr Fuller stated “I just felt the behaviour of Cr Conroy — he seemed to be on edge and my political antenna was up that something was wrong” [Transcript of Evidence, p. 108]. The following excerpts form Cr Fuller’s evidence further illustrates Cr Conroy’s unhappiness with the Working Party’s assessment of the Gandel bid:
Cr FULLER — …..We were all a bit taken aback by the way the meeting evolved. I could not believe it. In fact I made a note. I have put in my diary, ‘MC’ — which stands for Mark Conroy — ‘blatantly biased’. I could not believe anyone would operate that way in that arena. I was a bit shocked and surprised. I had never seen it happen before. Irrespective of what direction you might personally want to go down, you do not make yourself so obvious in that path. His behaviour was — —

The CHAIRMAN — You actually wrote a diary note?
Cr FULLER — I just wrote a diary note in here: ‘blatantly biased’. I have actually put a dash, and I would prefer actually not to state on record the next one because it is just my opinion and I would prefer not to say it. I just felt he was blatantly obvious.

The CHAIRMAN — You do realise that you are protected?
Cr FULLER — I realise that. Well, I did put a dash and did put ‘corrupt’ because I felt he was trying to corrupt the process. I have got it here, ‘MC blatantly biased — corrupt’.

Mr CRAIGE — Is that how you felt?
Cr FULLER — Yes, I did. That is exactly how I felt. . . .

[Transcript of Evidence, pp. 110-11].

In his evidence to the Select Committee, Cr Asker submitted that Cr Conroy appeared “Stressful . . .certainly not the usual behaviour I would expect from Cr Conroy” [Transcript of Evidence, p. 120]. He also stated that “I knew Mark at that stage — sorry, Cr Conroy — at that stage was pushing about 100 miles an hour for the other bid. I did not know why” [Transcript of Evidence, p. 121].

Cr Parkin told the Select Committee “ . . . my impression was that Mark Conroy was pushing very strongly for the other party, for whatever benefit or whatever reason” [Transcript of Evidence, p. 136].

Mr Edwards formally informed the Mayor and the Councillors of the developments that had occurred after the briefing on 26 September in a memorandum dated 28 September 2001 [See Appendix G].

On 27 September, a letter was sent by Malleson Stephen Jacques, the law firm acting on behalf of Gandel Retail Trust, to the Council’s solicitors. The letter confirmed Gandel’s decisions to execute the contracts, subject to the deletion of Special Condition 35 which related to economic viability. The letter further informed the Council that Gandel had noted the Grocon scheme proposed less car parking spaces than was stated in the requirements for retail uses, and that Gandel wished to remove 430 car parking spaces from its proposal. The letter noted that this would enable the Gandel
commercial offer for the North of Beach Street to increase by between $4 and $5 million.

Evidence was submitted to the Select Committee by three Councillors – Cr Wilson, Cr McClelland and Cr Asker — about further disclosures of confidential Council information given out at the 26 September briefing. According to their evidence, these Councillors were invited to a 5 p.m. meeting on Friday, 28 September, at Mr Matthew Viney’s Electorate Office in Frankston. Mr Viney is the Member for the Legislative Assembly Electoral District of Frankston East. The Councillors submitted that the meeting was being held to discuss possible amendments to the Council’s recommendations that were scheduled to be resolved at the Frankston City Council meeting to be held on 1 October 2001. The following excerpts from the Transcripts of Evidence indicate to the Select Committee that confidential information from the Council’s briefing had been disclosed to Mr Viney, in contravention of Section 77 of the Local Government Act 1989:

The CHAIRMAN — Did Cr Conroy contact you on either the Thursday or Friday?
Cr ASKER — He contacted me on the Thursday night.
The CHAIRMAN — That is in your diary notes?
Cr ASKER — Yes, that is in my diary notes.
The CHAIRMAN — What was the nature of the conversation?
Cr ASKER — That was on the Thursday night?
The CHAIRMAN — I will come straight to the point. Did he invite you to a meeting?
Cr ASKER — I think he suggested that we needed to get together. If I can just read again from my notes. As I said before to follow the same questions as what Vicky did on Friday. ‘As well as trying to convene a meeting with Matt Viney or at Matt Viney’s office. This is a clear breach of protocols and Cathy, Vicky and myself had reservations about going to such a meeting.’

[Transcript of Evidence, p. 125]

Cr WILSON — Yes, so I left my phones off most of Friday and just checked my messages, and a message came through, I think at about 8.55 from Matt Viney, saying he had set up a meeting in his office for 5 o’clock that afternoon, and could I return his call.
The CHAIRMAN — What was the purpose of the meeting?
Cr WILSON — It was about the CAD development.
The CHAIRMAN — So do you believe Matt Viney had access to confidential information that was supplied only to the working party and the councillors?
Cr WILSON — Yes.
The CHAIRMAN — How did you come to that opinion?
Cr WILSON — Because during some of our discussions he had mentioned that . . .

* * * *

Cr WILSON ....— he spoke about the difference in figures between the two bids. He knew the difference in the sale figure of the north of Beach Street car park and mentioned it was because of the car parking, which Mark had rung me about on the Wednesday night and said the same thing.
The CHAIRMAN — So how do you know that Matthew Viney had this information? He relayed it to you?
Cr WILSON — He told me the price that the bidders . . .

[Transcript of Evidence, pp. 82-3]

* * * *

Mr HALLAM — … And the information which Mr Viney had conveyed to you was of such specifics that you were convinced that he could only come via that by someone leaking that privileged information? I mean, could he have guessed the information he was providing to you?
Cr WILSON — You would not guess that there were differences in car parking numbers unless you were at the briefing the day before, because that is the only time I knew about it.

[Transcript of Evidence, p. 84]

* * * *

Mr HALLAM — Let us go back one step. What was it that convinced you that Matt Viney had privileged information?
Cr McCLELLAND — There was to be a meeting at 5 o’clock on the Friday in his office. That says it all for me, that he would know about it.
Mr HALLAM — He may simply have been offering the venue for councillors to meet.
Cr McCLELLAND — I doubt that.
Mr HALLAM — What we are trying to do is understand your view of this. It may have been that Matt Viney was simply offering a venue in which councillors could meet to discuss the CAD development?
Cr McCLELLAND — It is possible, but I doubt that.
Mr HALLAM — But you chose not to attend that meeting?
Cr McCLELLAND — Yes, I said to Mark Conroy, ‘I will not be coming, I do not feel comfortable being at Matt Viney’s office and discussing this. We are under confidentiality, so I am not coming’. I had also asked another councillor who was not invited, Bill Parkin, about it. I had spoken to him because I was quite worried about this meeting and Bill had said to me, ‘You would be really silly if you went’.

[Transcript of Evidence, p. 95]
While the three Councillors all submitted that they did not attend the first meeting that was scheduled to take place on 28 September 2001 in Mr Viney’s Electorate Office, Cr Asker told the Select Committee that he did attend a meeting with Cr Conroy and Mr Viney on Monday 1 October. The meeting took place in Mr Viney’s Electorate Office. The following evidence given by Cr Asker again strongly suggests to the Select Committee that there was a further breach of Section 77 of the Local Government Act 1989:

Cr ASKER — ‘Monday 1st, approximately 12.30 p.m.’ This is at Matt Viney’s office.
Mr CRAIGE — So you went up then?
Cr ASKER — I went up there.
Mr CRAIGE — Okay.
Cr ASKER — Okay. I’d like to add that I went up there a little bit early. I went up there shortly after that, when Mark, Cr Conroy, was not there, so I spent the next half hour or so just walking around the shops. I dropped back in there, and I finally caught up with him at approximately 12.30 at Matt’s office. ‘I said’ — when I walked in there I assumed I would be talking to Cr Conroy, and I was shuttled into Matt Viney’s office and Matt was there, Mr Viney, as well as Cr Conroy.
’I said I was concerned with being here. Matt Viney said, “That’s just the shit they try to spin to stop you from hearing independent opinions”, et cetera, et cetera, quote, unquote. Do you want me to go on? The meeting went for about 1 hour, where they suggested some new amendments to the council recommendations.
Mr HALLAM — They suggested new amendments?
Cr ASKER — They showed me the new amendments.
The CHAIRMAN — So you have now got Matthew Viney intervening in the process?
Cr ASKER — Correct.
Mr CRAIGE — He had the information available which was available for Monday night’s meeting?
Cr ASKER — Correct. All the amendments that Cr Conroy wanted to put forward.
The CHAIRMAN — And he had the information that you were given at the briefing on the Wednesday?
Cr ASKER — I only saw the amendments, so whether he had any more information than that I cannot tell you on that, but he had the amendments.

[Transcript of Evidence, pp. 125-126]

In support of his evidence, Cr Asker provided the Select Committee with detailed diary notes of meetings, observations and discussions he had with various people in relation to this matter.

The Select Committee subpoenaed the Council-issued mobile telephone records of Cr Mark Conroy for calls made between 27
September 2001 and 2 October 2001. These were the dates immediately after the Council briefing and up to the publication of the details about the briefing in the *Frankston Independent* newspaper on 2 October 2001 [see Appendix C]. A thorough analysis of these records indicates that Cr Conroy made the following calls to the *Frankston Independent* newspaper:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Duration of call</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 September 2001</td>
<td>12.03</td>
<td>2 min 07 sec</td>
</tr>
<tr>
<td></td>
<td>15.40</td>
<td>7 min 33 sec</td>
</tr>
<tr>
<td>28 September 2001</td>
<td>12.32</td>
<td>29 sec</td>
</tr>
<tr>
<td></td>
<td>13.10</td>
<td>14 min 40 sec</td>
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<tr>
<td></td>
<td>14.54</td>
<td>31 min 44 sec</td>
</tr>
<tr>
<td>1 October 2001</td>
<td>10.45</td>
<td>4 min 23 sec</td>
</tr>
<tr>
<td></td>
<td>11.29</td>
<td>1 min 45 sec</td>
</tr>
</tbody>
</table>

During this same period at least 14 telephone calls were also made on Cr Conroy’s Council-issued mobile telephone to Mr Matthew Viney, MP. The Select Committee notes the evidence provided by Cr Asker, who informed the Committee that Cr Conroy had a work station at Mr Viney’s office [see Transcript of Evidence, p.123]. Cr Asker also noted in his diary on Monday 1 October 2001, that “Mark rang me” and “He was calling from his office at Matt’s.”

Although the Select Committee has not been able to determine the nature and content of these calls, an inference can be made that confidential details of the Frankston CAD Development were discussed. Cr Asker, in his evidence, stated categorically that Mr Tony Murrell, a journalist from the *Frankston Independent* newspaper telephoned and spoke with Cr Conroy at Mr Viney’s Electorate office at about 12.30 p.m. on Monday 1 October 2001. Cr Asker was present when this telephone call was made.

Further evidence was heard by the Select Committee which indicated that the *Frankston Independent* had extensive knowledge of confidential details about the CAD Development process on or around 27 September 2001. In his evidence to the Select Committee, Mr Bernard McNamara (Planning and Development Manager, Gandel Group of Companies) told the Select Committee that he was informed on Thursday 27 September 2001 of the
outcome of the concurrent negotiation process. The following excerpts from Mr McNamara’s evidence confirms this fact:

Mr McNAMARA — The recommendation that was advised was that they were to negotiate with Grocon, is my understanding.
Mr HALLAM — How do you know that?
Mr McNAMARA — We were advised through a journalist.
The CHAIRMAN — A journalist contacted you directly?
Mr McNAMARA — No, he contacted Rogan Ward, and then I found out subsequently.

[Transcript of Evidence, p. 57]

The CHAIRMAN — Could you identify the journalist?
Mr McNAMARA — No. It was passed on to me.
The CHAIRMAN — It was passed on?
Mr McNAMARA — Yes.
The CHAIRMAN — So they did not speak directly with you?
Mr McNAMARA — No.
The CHAIRMAN — Did you return the call to the journalist?
Mr McNAMARA — No, I did not.
The CHAIRMAN — Do you know which newspaper it was?
Mr McNAMARA — I think it was the Independent.
The CHAIRMAN — But you are not sure?
Mr McNAMARA — From recollection, from the conversation, I think it was the Independent.

[Transcript of Evidence, p. 57]

In a letter to the Select Committee dated 3 November 2001, Cr Cathy Wilson stated that:

On Monday 1st October (or it may have been the Friday) Mr Tony Murrell rang me and asked about the Indemnity Clause, and made reference to the Quayside debacle of the 1980s. I had no idea what he was talking about and told him this. He asked if I understood about the Indemnity issue that we were told about at the briefing. I was a bit shocked and asked him how he knew. He relayed to me the entire contents of the Officer’s recommendation, even to the details of not going ahead with Gandel and only negotiating with Grocon for a further 30 days. He spoke of Grocon not complying with car parking. I asked him how he knew all this, and he said it was just a guess.

The Select Committee believes that this evidence clearly demonstrates that detailed confidential information from the briefing to the Councillors was communicated to the Frankston Independent by someone who attended the briefing and was subject to the confidentiality provisions attached to the CAD Development process.
At the Council meeting held on the evening of 1 October 2001, it was resolved that neither of the final proposals for the CAD development be accepted by the Council and that a separate negotiation process be entered into with both short-listed parties. A copy of the full resolution appears at Appendix H.

On 2 October 2001, the *Frankston Independent* newspaper published an article on page 1 headed ‘Civic centre doubt as prime site talks reopen’ which reported (with mixed accuracy) confidential details of the Working Party’s evaluation scores of the two bids by Gandel Retail Trust and Grocon-Proclan. A copy of this article appears at Appendix C.

Following the conclusion of the concurrent negotiation process with Gandel Retail Trust and Grocon-Proclan, PricewaterhouseCoopers submitted their probity report to the Council (dated 19 October 2001) entitled “Frankston CAD Development Negotiations Process.” A copy of the report appears at Appendix I.

The Select Committee believes that it is appropriate to release the probity auditor’s report in view of the fact that negotiations for the development of the Frankston CAD have now been signed off. Indeed, much of the information contained in it has been referred to by witnesses and others at public hearings.

This report expressed a qualified opinion. The probity auditors were satisfied that the procedures for the calling and evaluation of submissions were appropriate. According to the report, the extent to which the Working Party followed the procedures was seen as satisfactory and the conduct of the Working Party in the evaluation and selection process was seen as appropriate. The documentation supporting the evaluation process was adequate and the Working Party recommendation was consistent with the results of the evaluation. However, the probity auditor included the qualification that two probity issues were identified:

- The advice received from Gandel via telephone during the Working Party presentation, which included a change to the financial component of that company’s bid, possibly constituted a breach of the confidentiality requirements of the process; and
- The publication of the Working Party’s calculations in the *Frankston Independent* on 2 October 2001 constituted a breach of the confidentiality requirements of the process.
The report concluded by observing that while both issues were of concern, the modification of the Gandel bid compromised the effectiveness of the Concurrent Negotiation Process. The Select Committee strongly agrees with these conclusions.

After taking evidence from the probity auditor, the Select Committee asked for a copy of the draft version of the probity report submitted to the Council. The draft report, dated 28 September 2001, states that the probity auditors could not confirm that appropriate levels of confidentiality were maintained in the final stages of the Concurrent Negotiation Process. The draft report asserts that the risk that confidential information surrounding Working Party evaluation issues associated with its submission was made known to the Gandel Retail Trust, could not be eliminated. The Select Committee was perplexed as to why the draft version, as previously submitted to the Council, was so dramatically different from the final report formally submitted to Council.

On 30 October 2001 Crs Asker, Fuller, McClelland and Wilson were invited to give evidence to the Select Committee. At their request, the Select Committee issued summonses for their attendance. On 29 November 2001 Cr Mark Conroy was invited to give evidence to the Select Committee at a public hearing scheduled for 10 December 2001. Cr Conroy declined the invitation, but indicated by telephone to the Secretary to the Select Committee on 7 December 2001 his intention to make a written submission on the Select Committee’s terms of reference. No such submission has been received.

CONCLUSIONS AND FINDINGS

The Select Committee finds that a breach of Section 77 of the Local Government Act 1989 occurred, as confidential details of the scores of the two bidders (which had been accessible only to the Councillors and members of the Working Party — all bound by confidentiality requirements) were published in the Frankston Independent on 2 October 2001 [See Appendix C].

The Select Committee considers that a further breach of Section 77 of the Local Government Act 1989 may have occurred. This breach relates to the circumstances leading to the eleventh hour changes submitted by Gandel Retail Trust to materially alter the company’s
original tender. The evidence presented to the Select Committee indicates that such a breach is likely to have occurred during the Working Party’s presentation to the Councillors on 26 September 2001, between the coffee break taken at 3.30 p.m. and the conclusion of the briefing at 5.00 p.m.

Indeed, the probity auditors appointed to oversee the Concurrent Negotiation Process for the Frankston CAD Development concluded that such a breach might have occurred, thereby jeopardising the probity of the process.

Evidence was presented to the Select Committee asserting that the eleventh hour change to the Gandel bid on 26 September did not alter the original bid. Evidence was presented to the Select Committee that the telephone call to Mr Kerr (and subsequent email to Ms Orsini) conveyed to the Council that the Gandel Management Board had decided to execute the contract of sale to purchase the land north of Beach Street, subject to one change - the deletion of Condition 35 of the contract of sale. This condition related to a requirement of 90 days to determine the Central Park proposal’s commercial viability and to negotiate commercial terms and conditions for the civic centre at Central Park. The Select Committee heard evidence that the circumstances leading to the eleventh hour telephone call were due to unexpected timing and incredible coincidence, rather than a material change to the content of the tender.

However, in addition to this change, the letter sent by Gandel Retail Trust’s solicitors to the Council’s solicitors on 27 September, informed the Council that Gandel also wished to remove 430 car spaces from its proposal. This was to bring the Gandel proposal closer to the Grocon proposal, which, according to the letter, had fewer car parking spaces than had been initially required. Removing the extra car parking spaces from its proposal had the effect of increasing Gandel’s bid for the development by a sum of between $4 million and $5 million.

In his evidence to the Select Committee, Mr Bernard McNamara, of Gandel Retail Trust, stated:

> It had been reported in some of the papers that our bid had changed and therefore we thought it appropriate that we clarify that the bid had not changed.

[Transcript of Evidence, p. 63]
Mr Rogan Ward, of Commercial Property Services, stated:

I was advised that the executed contracts were in the same form and had the same financial offer that was provided in August except for the deletion of the conditions on the commerciality of the central car park. The financial offer on the bid had not changed as at 30 November this year. In simple terms, there was no new offer.

[Transcript of Evidence, p. 159].

The Select Committee, however, is of the view that the deletion of Condition 35 and the removal of car parking spaces, amounted to a financially better bid, which had the effect of materially altering Gandel’s original proposal.

Mr McNamara also commented that “we are in a competitive process, the Board was realising that it was not going to get its own way and therefore decided to sharpen its bid” [Transcript of Evidence, p. 54]. The Select Committee is of the opinion that the use of the terminology “sharpen” is an acknowledgment that the bid was substantially and materially changed. The evidence taken from several Councillors also indicates that it was their understanding that the Gandel bid had been significantly altered, as the following excerpts from the public hearing held on Friday, 2 November, 2001 show:

Mr HALLAM — Let us be clear on this, Councillor, because it is very important. It is your impression that the late modification by Gandel put more money on the table? Those were the words you used a moment ago.

Cr WILSON — Yes

[Transcript of Evidence, p. 79]

* * * * *

Cr Fuller submitted:

Obviously what we were told as councillors was that the Gandel Group had changed their bid, had altered their process — whatever they had put in, they had actually changed it.

[Transcript of Evidence, p. 105].

The Select Committee is satisfied that the change to the Gandel bid (as communicated in the telephone call to Mr Kerr, and the subsequent email and formal letter) constituted a significant and material alteration to their original tender.
The Select Committee also finds from the evidence of three Councillors that a third breach of confidentiality was most likely to have occurred. The Select Committee accepts that a meeting was organised with a party not privy to the CAD process indicating that the confidentiality of the process was breached. In particular, the crucial evidence given by Cr Asker, to the effect that he attended a meeting held in Mr Matthew Viney’s electorate office, at which Mr Viney was present and at which meeting information already the subject of confidentiality was discussed, strongly suggests this further breach. Cr Asker’s evidence suggests that Mr Viney demonstrated full awareness of the subject matter – information that should have been only within the confidential knowledge of the Working Party and the Frankston Councillors.

The Select Committee recommends that an investigation be undertaken by the Office of Local Government into the process followed by the Frankston City Council in the CAD Development negotiations. Specifically, the Select Committee’s findings of one unequivocal breach of the Local Government Act 1989, as well as the likelihood of other breaches, need to be investigated by the Office of Local Government with a view to establishing the identity of the person or persons responsible for the breaches.

Should the Office of Local Government concur with the Select Committee’s findings, and the person or persons responsible be identified, the penalties attached to breaches of Section 77 of the Local Government Act 1989 should then be invoked.

The Select Committee is satisfied that the process established by the Frankston City Council to govern the CAD Development project was, until the briefing of 26 September 2001, appropriate and that the Working Party acted with integrity and in a professional manner at all times. The questionable probity of the process following this date undermined the entire project, and resulted in an unnecessary waste of ratepayer funds and resources. Potentially, costly legal action between Council and one or both of the bidding parties could also have occurred to the detriment of the Frankston business community and ratepayers.

More particularly, the Select Committee noted that there was no suggestion of a breach of confidentiality at any time during the many months of sensitive negotiations undertaken by the Working Party. Indeed, the breach or breaches which caused all the media
speculation and acrimony at the Frankston City Council table, only occurred after the briefing of Councillors and, more pointedly, immediately after that briefing.

This thoroughly supports the Select Committee’s view that the breach or breaches were committed by a Councillor, and on the evidence of those Councillors who agreed to appear before the Committee, it was Cr Conroy who had both opportunity and motive and thus should be the primary subject of the investigation recommended.

Notwithstanding that a successful resolution to the development process has now been achieved, the Select Committee believes that the questionable events that occurred in the original concurrent negotiations process have been detrimental to the Frankston community and have severely tarnished the reputation of local government generally.

Following the failure by Frankston Council to appoint a preferred developer for the Frankston CAD Development at the conclusion of the original concurrent negotiation process, it then embarked on a separate process of negotiations with both of the short-listed parties. The new negotiations concluded on 26 October 2001. PricewaterhouseCoopers was again appointed to act as probity auditor to oversee the process.

Subsequently, a decision was taken to explore the possibility of the two short-listed parties presenting a joint submission to Council for the development of the three Council-owned sites, and after a number of meetings, the parties agreed to this proposal.

On 17 December 2001, Frankston City Council resolved to endorse Grocon Constructors Pty Ltd and Gandel Retail Trust as joint preferred developers for the North of Beach Street, Central Park and Sherlock and Hay sites until 30 June 2002 [see Appendix J].

The Select Committee is pleased to note that development work for this project is expected to commence in late 2002. The Select Committee takes some comfort from the extent to which its establishment and inquiry contributed to the negotiated compromise of appointing joint preferred developers.

Committee Room
March 2002
APPENDICES

(A) Advertisement placed in the Herald Sun newspaper on 22 October 2001 announcing the commencement of the Select Committee inquiry.
(B) List of submissions received.
(C) “Civic Centre doubt as prime site talks reopen,” Frankston Independent, 2 October 2001.
(D) Chief Executive Officer’s Memorandum to Mayor and Councillors, 5 March 2001.
(F) Cr Conroy’s letter regarding possible conflict of interest, 27 March 2001.
(G) Chief Executive Officer’s Memorandum, 28 September 2001.
(H) Council resolution, 1 October 2001.
(J) Chief Executive Officer’s Correspondence to Select Committee, 24 January 2002.

MAPS

(1) Schematic drawing of proposed Frankston CAD Development Sites.*
(2) Aerial photograph of proposed Frankston CAD Development Sites.*

* Reproduced by permission of the Frankston City Council
SELECT COMMITTEE ON THE
FRANKSTON CENTRAL
ACTIVITY DISTRICT
DEVELOPMENT

The Legislative Council has appointed a Select Committee to enquire into and report upon the process followed by the Frankston City Council in its consideration of the proposed construction and development of a multi-million dollar commercial facility in the Frankston Central Activity District Development, including allegations made in both newspaper reports and the Victorian Parliament on matters related to this issue.

The Committee will hear evidence in public from representatives of PricewaterhouseCoopers on Friday, 26 October 2001 at 10am. The venue for this hearing will be the Legislative Council Committee Room.

Those wishing to make submissions and or give evidence to this inquiry should write to:

Matthew Tricarico
Secretary
Select Committee on the Frankston Central Activity District Development
Parliament House
MELBOURNE VIC 3002

HON. A.R. BRIDESON, MLC
CHAIRMAN
# APPENDIX B

## SUBMISSIONS

<table>
<thead>
<tr>
<th>PERSON/ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Mr Martin Brumer</td>
</tr>
<tr>
<td>• Mr Jon Edwards, Chief Executive Officer,</td>
</tr>
<tr>
<td>Frankston City Council</td>
</tr>
<tr>
<td>• Mr Rogan Ward, Managing Director,</td>
</tr>
<tr>
<td>Commercial Property Services Pty Ltd</td>
</tr>
</tbody>
</table>
Civic centre doubt as prime site talks reopen

Frankston mayor Cr Mark Connery last night (Monday) was asked if he supported the current efforts to find new council offices from the existing civic centre redevelopment plans.

"I have no problem," Cr Connery said. "I supported the previous (Frankston) plan, but I am not sure what the future plans are." He was later asked if he would support a new civic centre plan. "I will support any plan that is presented. It is not my decision," he said.

The council is considering options for the new civic centre and has invited interested parties to submit proposals. The council is expected to make a decision in the coming weeks.

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Property

91,000 copies printed each week

Submarine led tourist boom for Hastings

A SUBMARINE has surfaced as the latest hot tourist attraction for the Mornington Peninsula. The project was announced yesterday at the annual meeting of the Victorian Tourism Association. The project offers visitors a unique experience, allowing them to take a tour of a real submarine. The project has been funded by local council and private funds.

The submarine will be located near the Hastings Pier and will be accessible to the public. The project is expected to create 50 jobs and generate $5 million in revenue for the local economy.

---

Civic centre doubt as prime site talks reopen

Councilors refused to follow the council's advice to reject the offers of local developers and begin a new process.

The process would ensure the project remains on track and the council can make the best decision for the community.

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Property

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A SUBMARINE has surfaced as the latest hot tourist attraction for the Mornington Peninsula. The project was announced yesterday at the annual meeting of the Victorian Tourism Association. The project offers visitors a unique experience, allowing them to take a tour of a real submarine. The project has been funded by local council and private funds.

The submarine will be located near the Hastings Pier and will be accessible to the public. The project is expected to create 50 jobs and generate $5 million in revenue for the local economy.
Councillors

Council's Probity Auditors for the CAD Redevelopment have requested that the issue of conflict of interest be drawn to the attention of Councillors and members of the Working Party.

A conflict of interest with official duties arises where an individual's private interest conflicts, or could be perceived to conflict, with that individual's public duty. The recently published Probity Guidelines for Government Tendering Projects in Victoria state that "there is a reasonable public expectation that where such conflict occurs it will be resolved in favour of the public interest rather than your own."

"Conflict of interest" is a broader concept than that of "pecuniary interest" which addresses the relatively narrow concept of monetary or financial gain or loss. The Local Government Act requires Councillors and Senior Officers to provide a written declaration of interests in relation to pecuniary interest.

The Victorian Government's "Probity Guidelines for Government Tendering Projects in Victoria" also states that "it is not possible to define all potential areas of conflict of interest ... in some circumstances, the appearance of a conflict of interest could itself jeopardise your public integrity. You are required to declare to the management of your organisation, or the chief executive officer or Minister in the case of senior officers, any conflict of interest that may arise or is likely to arise. You should stand down in any decision making process where you may be compromised."

The 1997 publication "Under Careful Consideration: Key Issues for Local Government", Department of Local Government and the Independent Commission Against Corruption includes the following section "How to decide what is a conflict of interest". 
2. How to decide what is a conflict of interest

The following questions will help staff and councillors decide, in the first instance, whether a conflict of interest exists, or whether their behaviour could create the impression that it does, and so undermine confidence in the council.

♦ Do I, a relative, friend or associate stand to gain or lose financially from council’s decision or action on this matter?

♦ Do I, a relative, friend or associate stand to gain or lose my/our reputation because of council’s decision or action?

♦ Have I contributed in a private capacity in any way to the matter before council?

♦ Have I made any promises or commitments in relation to the matter?

♦ Have I received a benefit or hospitality from someone who stands to gain or lose from council’s decision or action?

♦ Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from council’s consideration of the matter?

♦ Is the person an election campaign donor or someone who helped during my election campaign?

♦ Could there be benefits for me in the future that could cast doubt on my objectivity?

♦ If I do participate in assessment or decision making, would I be happy if my colleagues and the public became aware of my association or connection?

♦ Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?

♦ Do I need to seek advice or discuss the matter with an objective party?

♦ Am I confident of my ability to act impartially and in the public interest?

♦ Do I understand the possible penalties if I go on with the action?”

The important aspect is for any conflict of interest, or potential conflict of interest, to be declared. A register will be established similar to the Pecuniary Interest Register, and will be maintained in my office. The Register will record:

♦ the individual(s) concerned;
♦ the circumstances involved;
♦ an assessment of the matter;
♦ how the matter was resolved, and
♦ any action taken by the council.

The best way of dealing with conflicts of interest is to prevent them from arising in the first place. If they do occur, it is important when deciding how conflicts will be handled that matters are assessed against established criteria.
According to the Under Careful Consideration report, criteria for assessment of a conflict of interest should include:

- Does the matter fall within the definition of a pecuniary interest in the Act?
- Alternatively, is there a non-pecuniary interest?
- Is all the relevant information available to ensure a proper assessment?
- What is the nature of the relationship or association that could give rise to the conflict?
- Has appropriate legal and other advice been obtained?
- Is the matter or issue one of great public interest? Is it controversial?
- Could the individual’s involvement in this matter cast doubt on his or her integrity?
- Could the individual’s involvement cast doubt on council’s integrity?
- How would it look to a member of the public?
- What is the best option to ensure impartiality, fairness and protect the public interest?

Where individuals disagree with the decision taken regarding their matter, they should be able to state a case to those who made the assessment.”

The sanction for a transgression in relation to the CAD Redevelopment, at the least, will be a qualification in the report of the Probity Auditor.

It is important that you are aware of the requirements that have been put to the three parties involved in the concurrent negotiations in regard to the integrity of the processes.

1. Letter from Council to the parties dated 20 December 2000 ....

**BRIEF OVERVIEW OF SOME RULES OF THE NEGOTIATION PROCESS**

As articulated at the interview and in the recent verbal advices, Council requires the short-listed respondents, as a condition of being involved in the concurrent negotiation process, to abide by certain rules of participation. Some of those rules encompass:

.....

**Probity**

In order to ensure the probity of the negotiation process, Council is appointing a probity auditor. The probity auditor will oversee the process and all parties are to comply with any request of the probity auditor.

**Confidentiality**

It is a condition of the invitation being extended to you, that you keep confidential any matter discussed between you, your employees and consultants and the Council’s working party or its consultants.
The terms of engagement to be signed by you will incorporate a confidentiality clause, a breach of which may result in you being disqualified from further participation in the process, in addition to any other actions which may be brought against you.

**Canvassing**

The invitation to you is extended strictly on the basis that you must not approach, or request any other person to approach, any Councillor of the Frankston City Council, any member of Council's staff or consultant to the Council (other than those persons who are identified as being the proper contacts for the duration of the process). Any attempt to solicit support for your proposal, or to otherwise seek to influence the outcome of the process may result in your proposal not being considered by Council.*

2. Terms of Engagement (executed by the three parties).

*6. **PROBITY OF NEGOTIATION PROCESS**

The Short-Listed Party agrees to be bound by the following rules in participating in the negotiation process for the proposed sale of the Properties:

**6.1 Probity Auditor**

6.1.1 The Short-Listed Party acknowledges that Council has appointed Michael Shatter of PriceWaterhouseCoopers, 333 Collins Street, Melbourne, as its probity auditor ("Probity Auditor") to oversee the negotiation process for the proposed sale of the Properties.

6.1.2 The Short-Listed Party agrees to comply with any request of the Probity Auditor in connection with the negotiation process.

**6.2 Confidentiality**

Until the successful Short-Listed Party's offer is accepted, neither
6.2.1 the Short-Listed Party, its employees or consultants, nor

6.2.2 any Councillor, member of the Council's staff or consultant engaged by Council,

may disclose the terms of any offer, or the acceptance or non-acceptance of any offer, or any discussions between the parties unless:

6.2.3 in the case of proposed disclosure by the Short-Listed Party, the Short-Listed Party first obtains the consent of Council; or

6.2.4 in the case of proposed disclosure by Council, Council first obtains the consent of the Short-Listed Party.

**6.3 Canvassing**

The Short-Listed Party, its employees or consultants must not approach, or request any other person to approach, any Councillor, member of the Council's staff or consultant engaged by Council:

6.3.1 to solicit support for its offers; or

6.3.2 otherwise seek to influence the outcome of the negotiation process.
6.4 Collusion

The Short-Listed Party, its employees or consultants must not enter into any agreement, arrangement or understanding with any other Short-Listed Party or any industry association concerning the preparation of an offer for the purchase of the Properties or any of them without the prior consent of Council.

7. BREACH

Notwithstanding any other provision in these terms of engagement, any breach of these terms of engagement by the Short-Listed Party including but not limited to the failure to perform any of the obligations described in the schedule set out in clause 4., by the dates set out in the schedule, may result in:

7.1 the disqualification of the Short-Listed Party in the negotiation process;
7.2 Council not considering the offer of the Short-Listed Party; and
7.3 any legal action which may be brought against the Short-Listed Party.*

Regards

Jon Edwards
CHIEF EXECUTIVE OFFICER
Urgent
Mr Jon Edwards
Chief Executive Officer
Frankston City Council
By Facsimile: 03 9781 4565

17 January 2001

Reference: Ltr Frankston Probity Jan2001.doc

Subject: Probity Assistance – Frankston CAD Redevelopment

Dear Jon

After the meeting between the Pinnacle Property Group and Michael Shatter, I am pleased to submit to you our letter of engagement in regards to providing Frankston City Council with Probity assistance for the Frankston CAD Redevelopment (the Project). I set out in this letter, a suggested terms of reference for us acting as probity auditor to Frankston City Council in respect of the above project.

Terms of Reference

We will act as probity auditor to the tender being conducted for the Project. The purpose of the probity audit will be to:

- assess the processes established to ensure that the tenders are evaluated in a manner which is independent, objective and fair to all tenderers
- verify that the evaluation process conforms to the defined evaluation procedures
- assess whether the results of the evaluation processes and the identification of the successful tender are consistent with the evaluation criteria, and documentation of the evaluation processes
- confirm that adequate documentation of the negotiation and evaluation process is in place
- assess whether the reporting of submissions to Council is undertaken appropriately
- review key negotiation documentation as required
- attendance at key milestone meetings.
At the conclusion of the evaluation process, we will issue an opinion on the results of our findings.

From discussions with yourself, Graeme Parton and Andrew Williams of the Pinnacle Property Group, we understand that an expression of interest process has already been carried out. Accordingly, it will not be possible for us to establish whether the evaluation criteria applied to this process were defined and documented before the opening of the expressions of interest. This is an important factor in ensuring that the evaluation process is not adversely affected by suggestions of bias in the evaluation criteria. Accordingly, our opinion will not make any reference to Expression of Interest evaluation process.
Acknowledgment of Terms

Please acknowledge your agreement to the scope and terms of our assignment as set out in this engagement letter and the attached ABAS GRMS Standard Terms and Conditions by signing the copy of the engagement letter in the space provided and returning it to us.

I confirm that we will be able to commence the assignment early next week.

If you would like to discuss any aspect of this letter further, please contact either Michael Shatter on 8603 3026 or myself on 8603 3842.

Yours sincerely

Geoff Harry
Partner

Client Acceptance

The terms of this engagement are accepted by Jon Edwards on behalf of the Frankston City Council who represents that he is authorised to accept these terms on its behalf.

Signed

Position

Date 30.1.2001
27 March, 2001

Mr Jon Edwards  
Chief Executive Officer  
Frankston City Council  
PO Box 490  
FRANKSTON 3199

Dear Mr Edwards

Further to our discussions, I wish to advise that I may have a conflict of interest in relation to the CAD redevelopment.

On 16 November 2000 I conducted a fund raising function for the Australian Labor Party at Mount Eliza for the Federal seat of Dunkley. I arranged the function in my capacity as the endorsed candidate.

In addition to 65 other guests, the function was attended by representatives of the Gandel Retail Trust as well as Mr Colin Stubbs and Mr Don Simpson.

I have suspended any contact with these parties until the CAD redevelopment proposals have been finally determined.

Yours faithfully,

Councillor Mark Conroy  
MAYOR – FRANKSTON CITY
MEMORANDUM

TO: MAYOR & COUNCILLORS
FROM: CHIEF EXECUTIVE OFFICER
REF: 
DATE: 28 September, 2001
RE: CAD REDEVELOPMENT OPPORTUNITIES

Closed Council – Additional Item

1. As advised to Councillors at the information session on the CAD Redevelopment Opportunities on Wednesday, 28 September, 2001, a report will be presented to the Council for its meeting on Monday, 1 October. The report will be distributed on Monday.

2. Since the briefing on Wednesday, some issues have emerged.

3. The Council at the briefing, was advised that the Gandel Retail Trust (GRT) had not signed (executed) the Contract of Sale for the purchase of the north of Beach Street site and that the matter was to be considered by the GRT Board of Directors on Thursday, 27 September (see letter from Mallesons Stephen Jaques 24 September, attached ‘A’) Council’s Solicitors Maddock Lonie & Chisholm by letter dated 25 September (copy attached ‘B’), declined the request for the time extension. An earlier request for an extension of time (letter from the Gandel Group of Companies dated 20th September attached ‘C’) had been declined.

4. At 5.16 p.m. on Wednesday (while the briefing was finishing), Bill Kerr received a phone call from GRT advising that the Board of GRT had resolved to execute (sign) the contracts. This was subsequently confirmed by email at 5.34 p.m. (see copy attached “D”). GRT also deleted the conditions, each requiring 90 days to have the commercial viability of its Central Park proposal and to negotiate the commercial terms and conditions for the Civic Centre at Central Park.

5. This issue was the subject of discussion with senior Counsel on Wednesday evening.

6. On Thursday, 27 September, Council’s Solicitors received a further letter from GRT’s Solicitors, Mallesons Stephen Jaques, confirming that the GRT Board had resolved to execute (sign) the contracts (Contracts of Sale) and had deleted the special condition involving the two 90 day periods (referred to in 4 above). The letter continued and indicated that with adjustment to carparking requirements, the GRT commercial offer could be increased by between $4 million and $5 million (copy attached “E”).

7. The signed Contracts of Sale were received, by hand, at 9.50 am this morning.

8. These issues and the way forward will be the subject of discussions at a meeting of the Working Party and Maddock Lonie and Chisholm, commencing at 8.00 a.m. on Monday, 1 October. The report for Council will include options identified at that meeting.

Jon Edwards.
CLOSED COUNCIL

APPENDIX H

Extract from Minutes of Closed Council Meeting on 1 October 2001:

MOVED CR FULLER, SECONDED CR PARKIN

A. THAT THE REPORT OF THE WORKING PARTY BE RECEIVED.

B. THAT COUNCIL NOTE THAT THE WORKING PARTY’S FINAL EVALUATION SCORED HARBOUR CITY CONSORTIUM AT 768.2 AND GANDEL RETAIL TRUST AT 681.1 OUT OF A POTENTIAL SCORE OF 1,000 POINTS.

C. THAT COUNCIL NOTE THAT THE FINAL PROPOSALS ARE NOT ACCEPTABLE TO COUNCIL.

D. THAT COUNCIL DETERMINE NOT TO ACCEPT EITHER SHORT-LISTED PARTIES’ OFFER AND THAT THE CONCURRENT NEGOTIATION PROCESS BE CONCLUDED IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT.

E. THAT BOTH SHORT-LISTED PARTIES BE ADVISED ACCORDINGLY.

F. THAT, AS A SEPARATE PROCESS, COUNCIL ENTER INTO NEGOTIATIONS WITH BOTH SHORT-LISTED PARTIES, FOR A PERIOD CONCLUDING ON FRIDAY 26 OCTOBER 2001, AND THAT THE CEO BE AUTHORISED TO NEGOTIATE WITH THOSE PARTIES TO ACHIEVE SATISFACTORY CONTRACTS OF SALE FOR COUNCIL’S CONSIDERATION.

G. THAT PRICEWATERHOUSECOOPERS BE INVITED TO ACT AS PROBITY AUDITOR OF THE SEPARATE PROCESS.

H. THAT THE CEO REPORT TO COUNCIL BY THE END OF NOVEMBER, 2001 ON THE POSSIBLE OPPORTUNITIES FOR ACHIEVING AN AQUATIC CENTRE IN THE CAD AND UPGRADE/EXTENSION OF THE CURRENT CIVIC CENTRE BUILDING, OR RESITING OF THE CIVIC CENTRE.

I. THAT THE CEO REPORT TO COUNCIL BY THE END OF NOVEMBER 2001 ON SYSTEMS FOR THE MORE EFFICIENT MANAGEMENT OF CAR PARKING WITHIN THE CAD.

AMENDMENT (BY ADDITION) MOVED CR CONROY, SECONDED CR WILSON (Items K, L and M were considered in seriatum)

K. THAT NO LEGAL INDEMNITY BE GRANTED TO ANY PARTY.

LOST
L. THAT BOTH RESUBMITTED PROPOSALS CONFORM TO COUNCIL'S PLANNING SCHEME, IN PARTICULAR IN RELATION TO COUNCIL'S CARPARKING POLICY. LOST

M. THAT BOTH PARTIES SUBMIT ONE PROPOSAL ONLY, NO OTHER OPTIONS WILL BE CONSIDERED.

WITHDRAWN BY THE MOVER AND WITH LEAVE OF THE SECONDER AND COUNCIL.

AMENDMENTS K AND L WERE PUT AND LOST AND M WAS WITHDRAWN

THE ORIGINAL MOTION, WAS THEREFORE CARRIED IN FULL.

*Note: Amendment 'J' not put at the meeting.*
Frankston CAD Development Concurrent Negotiations Process - Probity Report

Following the termination of the Frankston CAD Development Concurrent Negotiation Process, we are pleased to present our probity report to the Council.

Background and Terms of Reference

An independent probity auditor was required by Frankston City Council in respect of the Concurrent Negotiation Process for the Frankston CAD Development. The audit was required to assess whether the processes to evaluate and select a preferred developer were executed in a fair and equitable manner. The scope of our appointment is set out in our engagement letter dated 17 January, 2001.

Our terms of reference were to:

- assess the processes established to ensure that the tenders were evaluated in a manner which was independent, objective and fair to all tenderers
- verify that the evaluation process conformed to the defined evaluation procedures
- assess whether the results of the evaluation processes and the identification of the successful tender were consistent with the evaluation criteria and documentation of the evaluation processes
- confirm that adequate documentation of the negotiation and evaluation process was in place
- assess whether the reporting of submissions to Council was undertaken appropriately
- review key negotiation documentation as required
- attend at key milestone meetings.
Approach

In order to form our opinion, we have performed the following tasks:

- reviewed the evaluation methodology before the opening of the submissions
- briefed the Working Party before commencement of the evaluation process
- performed testing of compliance with the evaluation methodology (which included confirming that conflict of interest and confidentiality statements were received from all Working Party members)
- responded to requests from the Project Manager for advice to resolve any probity issues which arose during the course of the Concurrent Negotiation Process
- ensured that the recommendation of a preferred developer was consistent with the results of the evaluation process and the Working Party report to Council.

Qualified Opinion

As a result of the work performed to date, we are of the opinion that:

- the procedures adopted for the calling of submissions, the supply of additional information to parties involved in the Concurrent Negotiations Process, the evaluation of submissions and the Working Party recommendation to Council to conclude the process without selecting a successful or preferred developer were appropriate.
- the extent to which the Working Party followed the defined procedures and criteria for the evaluation and selection process was satisfactory
- the conduct of the Working Party responsible for the evaluation and selection processes was appropriate
- the documentation prepared to support the evaluation of responses was adequate
- the Working Party recommendation to Council was consistent with the results of the evaluation process.
Qualification

The following probity issues were identified during our review.

Late modification to the Gandel Retail Trust submission

During the Council meeting at which the Working Party's evaluations of each developer's submissions were presented to Council, Mr Shatter of our office was informed that the Chief Negotiator for the Working Party, Mr Bill Kerr, received a telephone call from a representative of the Gandel Retail Trust (GRT) during the course of the presentation to Councillors, advising that GRT would address two key issues identified by the Working Party in the GRT submission. This included a change in the financial component of the GRT offer by way of amending specifications relating to car parking requirements in their proposed development.

Although there is no evidence that this constitutes a breach of the confidentiality requirements of the process, we consider it is possible that such a breach may have occurred thereby jeopardising the probity of the process. If there was such a breach, then in our view the probity of the process will have been compromised and there is a risk that one party may have gained an unfair advantage over the other party in the negotiation process. In addition, such disadvantaged party may raise the timing of the telephone call referred to above and the resulting amendment of the GRT submission as outside and contrary to the agreed processes given that the submissions and recommendations of the Working Party had been submitted to Council.

Publication of confidential Working Party information in the Frankston Independent

The 2 October 2001 edition of the local Frankston newspaper, the Frankston Independent, reported details of the Working Party's evaluation scores of the two submissions. Pursuant to the Concurrent Negotiation Process, this information was to remain confidential.

Disclosure of this information is a breach of the confidentiality requirements of the negotiation process.
Conclusion

While the above two issues are of concern and cause us to qualify our opinion, it is the issue regarding the late modification of the GRT submission which compromises the effectiveness of the Concurrent Negotiation undertaken by the Council. The late modification to the GRT submission has therefore eroded any competitive advantage which the other party would have had over the GRT following completion of the Working Party's evaluation process.

Please let us know if you require us to take any further steps in relation to matters raised in this report.

General

I would like to thank you and the evaluation team members for the cooperation and assistance given to us during our review. If you have any queries with respect to this opinion, please call me on 8603 3842 or Michael Shatter on 8603 3026.

Yours sincerely

Geoff Harry
Partner
24 January 2002

Mr Matthew Tricarico
Secretary
Select Committee on the Frankston Central Activity District Development
Parliament House
MELBOURNE 3002

Dear Mr Tricarico

I refer to your letter of 22 January 2002 requesting details of the joint development of the Frankston Central Activities District by developers Gandel Retail Trust and Grocon.

Enclosed is an extract of the minutes of the Council meeting held on 17 December 2001 in relation to the Frankston CAD redevelopment opportunities. The report was drafted for and dealt with in that part of the Council meeting at which members of the public were excluded, and accordingly the content of the report is confidential. You will note that the Council subsequently resolved that the resolutions be made public.

Also enclosed is a copy of the media releases in relation to the issue.

Positive negotiations are continuing and at this stage the extremely tight time frame appears achievable.

Yours sincerely

Jon Edwards
CHIEF EXECUTIVE OFFICER
URGENT BUSINESS

MOVED: CR ASKER  SECONDED: CR PARKIN

THAT THE FOLLOWING ITEM BE ADMITTED AS URGENT BUSINESS:-
FRANKSTON CAD REDEVELOPMENT OPPORTUNITIES

1. Frankston CAD Redevelopment Opportunities

12-6-92 (LO:CEO)

Purpose

To provide a progress report to Council regarding the negotiations on the redevelopment of the Frankston Central Activities District (CAD) and to seek endorsement of the Chief Executive Officer's recommendations.

Community Plan Objectives

The CAD Redevelopment Opportunities project responds to the Community Plan 2001-2004 Goals, Objectives and Strategies for Economic Development. In particular:
- the goal to "Develop and reinforce Frankston City's role as the major commercial, business and tourism focal point of the south-eastern region for employment growth and community prosperity".
- the strategies to "Assist, advise and promote elements of The Frankston Project", "Facilitate the introduction of a quality and diverse retail mix in the CAD" and "Examine options for regenerating the southern end of the CAD, possibly with a tourism focus to complement the Arts Centre and foreshore".

Background

On 1 October 2001 the Council unanimously resolved the following:

A. THAT THE REPORT OF THE WORKING PARTY BE RECEIVED.
B. THAT COUNCIL NOTE THAT THE WORKING PARTY'S FINAL EVALUATION SCORED HARBOUR CITY CONSORTIUM AT 788.2 AND GANDEL RETAIL TRUST AT 881.1 OUT OF A POTENTIAL SCORE OF 1,000 POINTS.
C. THAT COUNCIL NOTE THAT THE FINAL PROPOSALS ARE NOT ACCEPTABLE TO COUNCIL.
D. THAT COUNCIL DETERMINE NOT TO ACCEPT EITHER SHORT-LISTED PARTIES' OFFER AND THAT THE CONCURRENT NEGOTIATION PROCESS BE CONCLUDED IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT.
E. THAT BOTH SHORT-LISTED PARTIES BE ADVISED ACCORDINGLY.
F. THAT, AS A SEPARATE PROCESS, COUNCIL ENTER INTO NEGOTIATIONS WITH BOTH SHORT-LISTED PARTIES, FOR A PERIOD CONCLUDING ON FRIDAY 26 OCTOBER 2001, AND THAT THE CEO BE AUTHORISED TO NEGOTIATE WITH THOSE PARTIES TO ACHIEVE SATISFACTORY CONTRACTS OF SALE FOR COUNCIL'S CONSIDERATION.
G. THAT PRICEWATERHOUSECOOPERS BE INVITED TO ACT AS PROBITY AUDITOR OF THE SEPARATE PROCESS.
H. THAT THE CEO REPORT TO COUNCIL BY THE END OF NOVEMBER, 2001 ON THE POSSIBLE OPPORTUNITIES FOR ACHIEVING AN AQUATIC CENTRE IN THE CAD AND UPGRADE/EXTENSION OF THE CURRENT CIVIC CENTRE BUILDING, OR RESITING OF THE CIVIC CENTRE.
I. THAT THE CEO REPORT TO COUNCIL BY THE END OF NOVEMBER 2001 ON SYSTEMS FOR THE MORE EFFICIENT MANAGEMENT OF CAR PARKING WITHIN THE CAD.

Issues

With both proposals submitted in August 2001, the Council and the community recognised that both proposals contained positive attributes. The challenge of the negotiations is to achieve the best elements of both proposals for the community's benefit.

Discussion

Members of the Working Party have met with both short-listed parties to discuss the strengths and weaknesses of their proposals from the previous process.
Subsequently, it was decided to explore the possibility of the submission of a joint proposal.

Three meetings have taken place with the two short-listed parties to discuss the possibility of the two parties lodging a joint submission for Council’s consideration. The Council’s development imperatives and the objective of achieving the best possible outcomes for the Frankston community underpinned the discussions.

As a result, high level preliminary concept plans for the North of Beach Street site and Central Park (prepared by Hassell and Buchan) have been tabled for discussion.

The Parties have indicated their preparedness to develop a detailed proposal for Council’s consideration, on the basis that they would then enter into a joint venture to complete the development of the North of Beach Street, Central Park and Sherlock and Hay sites.

The first step for Council would be to appoint Grocon Constructors Pty Ltd and the Gandel Retail Trust jointly as Preferred Developers for these sites until 30 June 2002.

The following target dates are intended to apply, should the Council decide to proceed with the sale of Council land:

<table>
<thead>
<tr>
<th>Target Dates</th>
<th>Tasks until 30 June 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2001</td>
<td>Grocon/GRT joint venture appointed as preferred developers of the North of Beach Street and Central Park sites and Sherlock and Hay site</td>
</tr>
<tr>
<td>January – March 2002</td>
<td>Finalise Frankston Master Plan, Development Concept Plans, major tenancy negotiations and execute appropriate contract documentation</td>
</tr>
<tr>
<td>April 2002</td>
<td>Working Party Evaluation and Recommendation to Council</td>
</tr>
<tr>
<td>30 April 2002</td>
<td>Last date by which Council is to execute Contracts</td>
</tr>
<tr>
<td>April 2002</td>
<td>Council decision to sell land subject to statutory procedure (S189)</td>
</tr>
<tr>
<td>April – May 2002</td>
<td>Commence S189 Process (Local Government Act)</td>
</tr>
<tr>
<td>May/June 2002</td>
<td>Lodge Town Planning Application</td>
</tr>
</tbody>
</table>

It is anticipated that Town Planning approval would be secured between June and September 2002, and that construction would commence thereafter.

Financial Implications

It is anticipated that significant economic and community benefits will result from these projects. These benefits will be detailed in the Working Party’s report to Council following evaluation of proposals submitted.

The evaluation will be undertaken on the basis of the Council’s previously determined criteria and weightings. The criteria are as follows:

- Criteria 1 – Ability to Deliver the Developments
- Criteria 2 – Strategic, Economic Community and Financial Contribution to Frankston CAD and Frankston City
• Criteria 3 – Approach to use, form and design of developments
• Criteria 4 – Car parking and traffic

Conclusion

It is considered appropriate that Council pursues the achievement of the goals, objectives and strategies, as outlined in the Community Plan, by recommending the following:

Recommendation (CEO)

A. That Council endorse Grocon Constructors Pty Ltd and the Gandel Retail Trust jointly as Preferred Developers for the North of Beach Street, Central Park and Sherlock and Hay sites until 30 June 2002.

B. That Council endorse the target dates outlined in the report.

MOVED: CR PARKIN  SECONDED: CR ASKER

THAT THE RECOMMENDATION BE ADOPTED  CARRIED

MOVED: CR PARKIN  SECONDED: CR PRIESTLEY

THAT THE ADOPTED RECOMMENDATIONS BE MADE PUBLIC.  CARRIED

The meeting closed at 8.05 p.m.
MEDIA RELEASE

For Immediate Release: Tuesday 18 December 2001

GROCON/GANDEL - $100M + PROPOSAL FOR FRANKSTON CAD

Frankston City Council has granted preferred joint developer status to the leading property developers, Grocon and the Gandel Retail Trust, for the $100 million Frankston Shopping Centre development.

Grocon and Gandel, which had been competing for the redevelopment rights of the Frankston Central Activities District (CAD) project, will submit a joint proposal that will include:

- A high quality mall development in Beach Street.
- A substantial new retail shopping and office development, including a major discount department store, supermarket, fresh food and produce hall profiling the best from the Mornington Peninsula, and a range of specialty shops on North of Beach Street car park.
- A major entertainment precinct including state-of-the-art Reading cinemas and cafes at Central Park.

The Council on Monday night granted Grocon and Gandel preferred joint developer status for the development of the north of Beach Street site, Sherlock and Hay site and the Central Park site.

The preferred developers intend to work closely with Council to formulate a master plan for Frankston CAD and final concept plans for each of the sites. Development work would commence in late 2002.

The Mayor of Frankston, Cr Cathy Wilson, said she was delighted that Grocon and Gandel have got together to work closely with Council. This development will help stimulate investment, provide 800 jobs, give Frankston and nearby residents the best possible shopping choice and ensure the consumer spending dollar remained in Frankston.
"While negotiations for the CAD project have been lengthy and robust, we are now in a position to pursue the best of both previous development proposals and ensure Frankston becomes the focus for business, shopping and tourism in the south east region of Melbourne," she said.

Cr Wilson said that over the past six weeks the Council and representatives of Grocon and Gandel had been in constant negotiations with the aim of ensuring the best possible development for Frankston.

"The partnership proposal is a big step forward and I congratulate all of the parties involved in the venture," she said.

The Managing Director of Grocon, Mr Daniel Grollo, said: "We are committed and have a genuine enthusiasm to ensure the Frankston CAD project becomes the focal point for employment growth and community prosperity."

The Managing Director of Gandel Retail Trust, Mr Clive Appleton said: "The joint venture proposal offers an exciting, combined retail offer designed to capture "escape expenditure" and maximize the retail diversity and integration within the Frankston CAD."

-ends-

For further media information contact the Public Relations Unit on 9784 1812.
THE GROCON/GANDEL JOINT PROPOSAL

- The privately owned developer, Grocon Constructors Pty Ltd, and the publicly listed Gandel Retail Trust intend to form a joint venture for the proposed development of the North of Beach Street site, Sherlock and Hay site and the Central Park site.

- Both are likely to undertake development roles, with Gandel ultimately being the property owner and Grocon the builder.

- The North of Beach Street site will be developed in three stages and include a major discount department store and supermarket as well as a fresh food area and associated specialty retail.

- The Central Park site will also include a state-of-the-art cinema complex undertaken by the international cinema chain, Reading Entertainment, as well as cafes and specialty retailing.

- The creation of a "High Street" Retail Concept as part of a major mall development in Beach Street.
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It is anticipated that Town Planning approval would be secured between June and September 2002, and that construction would commence thereafter.
SCHEMATIC DRAWING OF PROPOSED FRANKSTON CAD DEVELOPMENT SITES:

SITE 2 - "SHERLOCK AND HAY" SITE YOUNG & PLAYNE STS.
- Site area: 5,471 sqm. (approx.)
- 2 street frontages.

SITE 3 - "FORMER POLICE AND LAW COURTS" SITE DAVEY/YOUNG/PLAYNE STS.
- Site area: 4,275 sqm. (approx.)
- 3 street frontages.

Property information package and expression of interest document available.
AERIAL PHOTOGRAPH OF PROPOSED FRANKSTON CAD DEVELOPMENT SITES: