SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL ON PUBLIC LAND DEVELOPMENT

FIRST INTERIM REPORT

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## Contents

**SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT** .......................1  
**CHAIRMAN’S FOREWORD** .................................................................3  
**REPORT** ..........................................................................................5  

1. Establishment of Select Committee ..................................................5  
2. Public Consultation ..........................................................................6  
   2.1 Written Submissions .................................................................6  
   2.2 Public Hearings .......................................................................8  
3. Terms of Reference - Attorney-General Intervention ....................16  
4. Input of Victorian Government Departments .................................19  
   4.1 Request for Private Background Briefings .............................19  
   4.2 Request for Public Land Data ..................................................20  
   4.3 Invitations to Major Projects Victoria and Parks Victoria to Attend Public Hearings on 26 and 27 September 2007 respectively .................................................................20  
   4.4 Invitations to Key Victorian Government Departments to Attend Public Hearings on 1 October 2007 .........21  
   4.5 Invitation to Department of Treasury and Finance to Attend Public Hearing on 29 October 2007 ...............22  
   4.6 Invitation to Department of Sustainability and Environment, and Parks Victoria to Attend Public Hearings in Port Campbell and Apollo Bay .........................................................22  
   4.7 Invitation to Department of Sustainability and Environment to Attend Public Hearing on 19 November 2007 ........23  
   4.8 Invitation to Department of Planning and Community Development to Attend Public Hearing on 27 November 2007 ....24  
   4.9 Conclusions Relating to Intervention by Attorney-General and Related Input of Government Departments ....25

**APPENDIX 1** ....................................................................................27  
**APPENDIX 2** ....................................................................................29  
**APPENDIX 3** ....................................................................................33  
**APPENDIX 4** ....................................................................................34  
**APPENDIX 5** ....................................................................................35  
**APPENDIX 6** ....................................................................................36  
**APPENDIX 7** ....................................................................................37
SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

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CHAIRMAN’S FOREWORD

I am pleased to provide this first interim report of the Select Committee on Public Land Development. The reference given to the committee is a very important one and responds to public concerns over the lack of planning by the State Government for the preservation of key public lands in metropolitan Melbourne and country Victoria.

The Committee has to date received in either written or verbal form, more than 160 contributions that relate to more than 70 sites around the State. Great interest and community support has been generated and on behalf of the Committee I am appreciative of the valuable input by these individuals and organisations.

A key issue is the decision to sell or otherwise alienate critical pieces of public land that have great local significance. Evidence shows inadequate processes are in place to consult the community or local authorities before the State Government moves to sell such land. Further, there are concerns over the lack of transparency in the process of identifying and valuing surplus public land. The themes which have emerged through the submissions show widespread concern over the State’s increasing urban density connected with the absence of a public plan for: (a) protecting existing public land and open space and (b) provision of additional public land and open space in relation to increased population density.

In Melbourne, the amount of public open space available will become an increasingly important issue given the State Government, through its Melbourne 2030 policy, has committed to increase the number of people in Melbourne by one million. Evidence to date suggests there is no public open space plan or measurement of the public open space required to support an increased population. Key sites in country Victoria have also been investigated and evidence taken. Some of these are highlighted in the report and others will be fully examined in the first half of 2008.

It is my unfortunate duty to report that through the intervention of the Deputy Premier and Attorney General, the Hon. Rob Hulls, M.P., the State Government has sought to hamper the activities of the Committee. In correspondence detailed in this report, the Government has sought to impose a narrow definition of ‘public land’ on the Committee. It is important to note that debate by Members of the Legislative Council when establishing the Committee contemplated only a commonly understood definition. No Member, including the Minister for Planning, at the time of debate sought to define ‘public land’ narrowly.

Only State Government witnesses at the direction of the Deputy Premier and Attorney-General have held that public land is defined by an absurd definition based on an obscure administrative order from 1988. No evidence from any non-government witness has supported the Government’s specious definition. This attempt to limit the Committee’s access to key information should be seen clearly for what it is – obstruction pure and simple. Government departments have failed to provide even basic information that fits within their narrow definition.

The long battle by parliaments to hold executive government to account is in direct conflict with the notion of a minister attempting to define the terms of reference of a parliamentary committee against the will of the parliament. The Legislative Council
should not have its committee activities defined or limited by the Government it is attempting to scrutinise.

The working definition of public land accepted by the Committee is in fact modelled from government documents. Further, the Clerk of the Legislative Council has provided formal advice to the Committee confirming the long established practice that it is for the Committee to decide the interpretation of its terms of reference. Strangely, the Department of Sustainability and Environment itself uses a broader definition of public land on its own website but disappointingly will only respond to the Inquiry according to the Government’s narrow definition. The intervention of the Deputy Premier and Attorney-General constitutes a very serious attempt to defy the will of the Legislative Council and is a discourtesy to the Victorian community.

The Committee’s report highlights evidence on a number of separate issues and particularly notes with concern recent developments with respect to the Kew Residential Services development and the sale of public land at Devilbend Reserve.

In respect to Kew, there are serious issues surrounding the transparency of the Kew Residential Services transactions, and the involvement of former Senator Graham Richardson, must be dealt with for reasons of community confidence despite the State Government’s determination to hide behind ‘commercial-in-confidence’ secrecy. The transactions behind the alienation of the huge tract of Kew land should be open to full public examination. Evidence shows the return to the State of Victoria is insignificant in the light of what is being lost. There was also further information emerging regarding options that Walker Corporation may have assigned, novated or transferred to another party. The Committee will need to deal with these emerging issues at future hearings.

There appears also to have been an unfortunate attempt to finalise the sale of the 40 hectare block of public land at Devilbend Reserve ahead of the Committee’s report. The Committee is further concerned by reports received at the end of November that the Government is proceeding and finalising the sale. A binding contract is likely to be impossible to unwind. If the transaction is completed, the State Government will stand condemned for the opportunity lost through its short term decision to sell the public land despite the strong contrary evidence and the clear views of the Mornington Peninsula community.

The extracts attached to this report show that Government Committee members opposed approximately half the paragraphs within the report and the adoption of the report in its entirety despite having many of their suggested amendments adopted.

Finally, I would like to thank the Committee staff, Secretary, Richard Willis, and research staff Anthony Walsh and Caroline Williams for their considerable efforts throughout the Inquiry process and in preparing this interim report.

The Committee will continue taking evidence around the State in the early months of 2008 with a view to tabling a final report by 30 June 2008. It is to be hoped that the State Government will end its semantic games, accept the Committee’s broad reference, acknowledge the valuable contributions by so many people around the State and co-operate fully with the Inquiry as the community would expect from an open government.

David Davis, MLC
Chairman
REPORT

The Select Committee on Public Land Development has the honour to report as follows:

1. Establishment of Select Committee

1. On 2 May 2007, the Legislative Council resolved to appoint a Select Committee of seven members to inquire into —

   a) the sale or alienation of public land for development;
   b) the sale or alienation of public open space for the purposes of private development; and
   c) the sale and development of public land and the relationship to the Melbourne 2030 policy and Green Wedges.

   A copy of the establishing resolution is provided in Appendix 1.

2. In accordance with this resolution, the following members were appointed to the Committee:

   • Mr D.M. Davis, Southern Metropolitan
   • Mr P.R. Hall, Eastern Victoria
   • Mr P.D. Kavanagh, Western Victoria
   • Mr E.J. O'Donohue, Eastern Victoria
   • Ms S.M. Pennicuik, Southern Metropolitan
   • Mr B.L. Tee, Eastern Metropolitan
   • Mr M.S. Viney, Eastern Victoria

3. On 9 October 2007, the Legislative Council agreed to a motion from the Leader of the Government to replace Mr M.S. Viney on the Committee with Mr E.W. Thornley (Southern Metropolitan).

4. The establishing resolution requires the Committee to present its final report to the Council no later than 30 June 2008. Further, the presentation of a report or interim report of the Committee will not be deemed to terminate the Committee's appointment, powers or functions.
5. The Committee held its first meeting on 21 May 2007. At that meeting, Mr D. M. Davis was elected Chairman and Mr B. L. Tee elected Deputy Chairman.

2. Public Consultation

2.1 Written Submissions

6. The Committee advertised its terms of reference and called for written submissions in early June 2007. Advertisements were placed in major metropolitan and regional newspapers throughout Victoria from 8-11 June. Written invitations to make a submission were also sent to a wide range of government departments, agencies, private organisations and individuals.

7. The closing date for submissions was 28 September 2007. However, following a number of requests to make a late submission, the deadline was extended to 29 October 2007. The Committee has received a total of 136 written submissions (see Appendix 2).

8. The majority of submissions provide details of single sites that have been sold or alienated, are in the process of being sold or alienated or have been proposed for sale or alienation. There are over 70 different sites and developments discussed in submissions. A large majority of submissions have been prepared by concerned individuals and/or resident groups. Of the individual sites, multiple submissions have been received in relation to the following issues:

- Kew Residential Services site;
- Devilbend Reserve;
- Port Campbell headland;
- Apollo Bay Harbour;
- Camberwell Railway Station;
- Carlton Gardens;
- Royal Park site;
- Merri and Edgars Creeks corridor;
- Caulfield Racecourse Reserve;
- Apollo Parkway in Greensborough;
- Green wedge issues in Yuroke; and
- Chicquita Park in Mentone and other issues in the City of Kingston.
While many of the submissions address single issues or sites, there are several key themes that have emerged in these submissions including:

- concerns that there is sometimes limited community support for the development of public land;
- there is a strong perception that the processes surrounding the sale or alienation of public land, whether by State or local government, lack accountability and are not transparent;
- there is a common argument that there is often limited or no opportunities for community input into the land development process;
- community concern over the State’s population growth and increasing urban density but lack of a transparent plan for:
  (a) existing public land and open space; and
  (b) provision of additional public land and open space in relation to increased population density;
- concerns over the impact of Green Wedge zoning on the value of and capacity to subdivide private land;
- concerns that developers target public land, which is used by the community as an asset, rather than acquiring private land for private development;
- concerns that the development of public land and open space deprives the community of an infrastructure asset without any offsetting or alternative provision; and
- concern over the progressive intrusion on public land and open space through private developments supported by government and/or government agencies.

The extent of community support of these views has not yet been fully evaluated by the Committee.

The Committee has received a number of submissions from local government that raise some interrelated systemic issues regarding the sale and alienation of public land and open space. Key issues identified are as follows:

- lack of transparency in the process of identifying and valuing surplus public land and limited opportunity for local government and community input;
- the complexity and outdated nature of the administrative and legislative framework regarding the management, sale and alienation of public land;
- the need for a long term, strategic and coordinated approach to the sale and alienation of public land by the State Government;
• the blurring of the traditional distinction between public and private land such as public private partnerships;
• concerns that surplus land is identified and evaluated on economic terms only rather than a triple bottom line approach being taken;
• the impact of the Budget Papers surplus land revenue target on the sale process;
• the requirement for local government to purchase public land at full market rates; and
• the tight timeframe (30 days) for local government to make decisions regarding the acquisition of surplus land, with sometimes limited information provided in relation to the property's existing condition.

11. The Committee has commenced taking evidence from local councils to discuss these systemic issues (see paragraph 43). A case study that illustrates these common concerns is the matters raised in the evidence from the City of Moonee Valley with respect to the future use of Bent Street Reserve in Moonee Ponds. Representatives from the City of Moonee Valley claim this parcel of land forms an important area of public open space and its loss would impact on the local community.

12. The Committee's further investigations in public hearings are based on issues raised in the written submissions.

2.2 Public Hearings

13. To date, the Committee has held public hearings in Kew, Tuerong (Devilbend), Port Campbell and Apollo Bay, together with hearings held at Parliament House. The following section summarises evidence taken at hearings dealing with specific public land sites.

2.2.1 Kew Residential Services site

14. The Committee received several written submissions relating to the development of the Kew Residential Services (KRS) site (formerly Kew Cottages). The KRS site is located in north west Kew and covers 27 hectares on the west side of Princess St. In 2001, the Premier announced plans to redevelop the KRS site with the 480 people then living at the site to be moved to community homes throughout the state, including 100 who would move into community housing on
Select Committee on Public Land Development – First Interim Report

the KRS site. Major Projects Victoria (MPV) is facilitating the development of the site in conjunction with Walker Corporation.

15. The Committee commenced public hearings in relation to this issue on 26 September 2007. Evidence was received from:

- the State Member for Kew;
- Boroondara Residents' Action Group and Planning Backlash;
- Boroondara City Council;
- Kew Cottages Parents' Association; and
- Kew Cottages Coalition.

16. The Committee invited Major Projects Victoria to give evidence on the day however the invitation was declined (see Appendix 3). Refer to further discussion in section 4.3.

17. On 8 October 2007, the Committee received evidence from Walker Corporation, developers of the Kew Residential Services project.

18. As part of its evidence, Walker Corporation provided the Committee with a copy of the financial model within the Kew Residential Services tender document. In providing this document to the Committee, Walker Corporation requested that the document not be released publicly on the grounds of commercial-in-confidence. The Committee notes that the Victorian Government has not published these tender documents in full on its Government Tenders website. The Committee further notes the release of commercial-in-confidence documents may mean organisations engaging in tender processes may be less willing to provide the Government with frank assessments. However, in this instance the Committee is disappointed the documents have not been made public.

19. The Committee notes there are publicly available documents which outline the commercial arrangements entered into by the Government. The Committee also notes the tenderer’s estimates of their internal returns and the Government’s returns are covered by the commercial-in-confidence agreement and are not publicly available. Given the public interest in the development of the Kew site, these documents should be made public as the documents suggest that the Victorian community may not receive an appropriate financial return for the alienation of 27 hectares of prime public land near the city.
20. The Committee also raises concern over Walker Corporation’s evidence on the matter of political donations to the Australian Labor Party, the Liberal Party, and Australian Democrats, and in particular the statement by the Managing Director of Walker Corporation that political donations may provide developers with favourable access to Ministers and other Government decision makers.

21. Key issues arising from the evidence received from witnesses in paragraphs 15 and 17 include:

- accommodation of the KRS clients and possible conflict between the development, relocation of KRS clients and the State Disability Plan;
- the loss of public open space on the site and the protection of the existing vegetation and natural environment;
- the lack of local infrastructure supporting the new community;
- lack of public consultation;
- limited involvement of Boroondara City Council in the planning process;
- lack of a developer contribution scheme;
- the density of the planned private housing;
- the lack of public disclosure over the finances of the contractual agreement between the Government and developer and the State Government’s anticipated financial return to disability services;
- lack of transparency in State Government dealings with Walker Corporation;
- involvement of Mirvac Group in the development;
- the role of political lobbyist, former Senator Graham Richardson; and
- possible influence of Walker Corporation political donations during the development approval process.

22. The Committee will be conducting further public hearings with key witnesses in relation to the Kew Residential Services development in late December 2007 and early in 2008. Based on the evidence received to date, the Committee will further investigate a number of matters including:

- questions as to whether or not the State Government has conducted an open and public process to properly examine the advantages or disadvantages of developing the 27 hectares of public land at the Kew Residential Services site, and whether it developed an outcome that takes sufficient account of the needs of the long standing residents;
• questions as to whether the tender process was conducted according to best practice and in the public interest; and
• questions over the involvement of lobbyist, former Senator Graham Richardson, in two distinct parts of the tender process: the successful achievement of the tender by Walker Corporation and then subsequently his intervention in the implementation of the tender arrangements by the State Government. Mr Richardson has been invited to give evidence at a future public hearing.

2.2.2 Devilbend Reserve

23. The Committee also received several written submissions in relation to the proposed development of a 40 hectare (Block 1) parcel of land within Devilbend Reserve. The Devilbend Reserve site covers 1057 hectares and is located in Tuerong on the Mornington Peninsula. The Reserve site has high environmental values including more than 150 species of indigenous flora and up to 84 fauna species including threatened species such as the White-bellied Sea-eagle and the Blue-billed Duck. There has been a strong community campaign over several years to protect the site from development and subdivision.

24. In September 2006, the Minister for Environment announced that the Park will be reserved as a Natural Features Reserve under the Crown Land (Reserves) Act 1978 and that Parks Victoria was to be appointed as the Committee of Management. The Minister also announced that 40 hectares of surplus Melbourne Water land, which he declared would not be required for the inclusion in the new Reserve, would be sold and that the proceeds of the sale would be allocated to management of the new reserve.

25. In order to further investigate issues raised in submissions, the Committee conducted public hearings in relation to this issue on 27 September 2007. Evidence was received from:

- Mornington Shire Council;
- Devilbend Foundation;
- Devilbend Landcare Group; and
- the State Member for Hastings.
26. The Committee invited Parks Victoria to give evidence on the day however the invitation was declined (see Appendix 4). Refer to further discussion in section 4.3.

27. A review commissioned by the Government conducted over a period of two years did not recommend the retention of the 40 hectare site. However, evidence received to date from the above witnesses highlight the following:

- concerns over the consultation process;

- the Devilbend Reserve will play a critical part in protecting biodiversity on the Mornington Peninsula and the incorporation of the 40 hectare lot would enhance this important role;

- the 40 hectare lot forms an integral part of the water catchment of the Devilbend Reservoir and should have been incorporated into the Devilbend Park and thereby have been protected from future sale or other incursion; and

- any decision to dispose of this land should be deferred for a period of 5-10 years until such time as visitation to the Devilbend Reserve can be assessed.

28. The Devilbend Foundation wrote to the Committee on 12 October 2007 highlighting the urgent need for the inclusion of ‘Block 1’ in the Government’s Devilbend Reserve management planning process. The Foundation believe that re-inclusion of the 40 hectare (Block 1) parcel of land in the formal management planning process for the whole of Devilbend Reserve is crucial to the Victorian Government’s decision making on whether or not to dispose of this land. A copy of this letter is provided in Appendix 5.

29. The Devilbend Landcare Group also wrote to the Committee on 14 November 2007 raising concern over the Government’s action, made soon after the Committee’s Devilbend hearings, to advertise the 40 hectare parcel of land for sale by tender. A copy of this letter is provided in Appendix 6.

30. In view of the concerns raised in evidence to date and subsequent correspondence by local resident groups, the Committee is concerned to note the State Government is proceeding in attempting to sell the 40 hectares of public land north of Graydens Road through an as yet uncompleted expression of
interest process. This action has been taken despite concerns raised by the local community and without regard to the Committee’s on-going investigations and tabling of a final report in June 2008. The Committee is further concerned by reports received at the end of November that the Government is proceeding and finalising the sale.

31. At a hearing on 19 November 2007 with the Department of Sustainability and Environment, the Committee sought information on any assessments the Department may have made in respect to the Devilbend Reserve site, including the 40 hectares to the north of Graydens Road. The Secretary of the Department declined to provide advice on this matter as he believed the issue was outside the Government’s interpretation of the terms of reference. However, the Secretary advised that should the Committee’s terms of reference be clarified by the Legislative Council, the information would be made available.

32. The Committee raises concern over the reluctance of Department of Sustainability and Environment to provide any relevant assessments and will be pursuing this matter with the Department in further hearings.

2.2.3 Port Campbell and Warrnambool

33. Submissions have been made in respect to the Southern Ocean Beach House development proposed at the Port Campbell headland. Accordingly, the Committee held hearings in Port Campbell on 7 November 2007 and received evidence from the following groups:

- Port Campbell Community Group;
- Geotechnical Engineer;
- Corangamite Shire Council;
- Port Campbell Environment Group;
- Port Campbell Professional Fishermen’s Association;
- Protectors of Public Land; and
- local residents.

34. Key issues raised in the hearings include:

- the use of the carpark (public land) adjacent to the proposed development;
- the scale of the proposed Port Campbell headland development;
• significant concerns over the geological instability and public safety of the Port Campbell headland including claims the proposed development could substantially accelerate a collapse of the headland;
• visual impacts the proposed development will have upon the Port Campbell Public Park Memorial Reserve and War Memorial;
• treatment of cultural heritage issues and environmental impacts in relation to the proposed Port Campbell headland development;
• community consultation on the Port Campbell headland project; and
• possible impacts on future access for commercial fishing vehicles.

35. In addition to the above hearings dealing with the Port Campbell headland, on 7 November the Committee also heard evidence from the Warrnambool Golf Club with regards to a landswap of Crown land.

36. The Committee invited the Department of Sustainability and Environment to give evidence at the Port Campbell hearings, however the invitation was declined (see section 4.6 below).

37. At a hearing on 19 November, the Committee further attempted to obtain the Department’s assessment of the proposed Port Campbell development. However, consistent with paragraph 31 above, the Secretary of the Department declined to provide advice on this matter as he believed the issue was outside the Government’s interpretation of the terms of reference.

38. Once again, the Committee raises concern over the reluctance of Department of Sustainability and Environment to provide any relevant assessments and will be pursuing this matter with the Department in further hearings.

39. While the Committee does not have expertise of a geological or technical nature, it wishes to highlight the urgent need for the Victorian Government to investigate and assess the geological stability of the Port Campbell headland. Serious concerns have been raised by a geotechnical engineer, among others, over the instability of this area of state and national significance which has been illustrated in recent years by the decision by VicRoads to relocate a section of the Great Ocean Road away from the headland.
2.2.4 Apollo Bay Harbour Development

40. Submissions have been made in respect to a proposed development at the Apollo Bay harbour precinct. The proposal includes a 5 star hotel/visitor accommodation, marina (with Harbour floor deepening possibly required), relocation of the golf course and conversion of the Crown land to open space and landscaped parkland, private sector development of buildings adjacent to the Harbour water’s edge and outdoor salt water pool.

41. In order to further investigate issues raised in these submissions, the Committee conducted public hearings in relation to this issue on 8 November 2007. Evidence was received from:

- Colac Otway Shire Council;
- Apollo Bay and Kennett River Public Reserves Committee;
- Otway Forum; and
- various local residents.

42. While, the Committee notes the public consultation has yet to be completed, issues of concern raised in the submissions and evidence with respect to the proposed development include:

- the proposed alienation of the public foreshore in Apollo Bay for the use of private developers and local government administrative facilities;
- public access to the redeveloped Apollo Bay Harbour Precinct;
- the transparency of the planning process regarding the redevelopment;
- the development plans appear to be at odds with the Victorian Coastal Strategy;
- the lack of community support for the Apollo Bay Harbour Precinct redevelopment; and
- safety and management of Apollo Bay Harbour.

2.2.5 Further Public Hearings

43. In addition to the above public hearings, the Committee has conducted hearings at Parliament House with various government and non-government witnesses. Part 4 of this report details evidence received from Government departments. At the time of completing this interim report, evidence has also been received from the following individuals and groups:
44. The Committee is in the process of analysing this evidence and will advise on key issues raised in a further report to the Legislative Council. A full list of all witnesses appearing in public hearings to date is provided in Appendix 7. Tabled with this Report is a full set of transcripts of evidence from hearings held to date which form a key part of the Committee’s evidence.

3. Terms of Reference - Attorney-General Intervention

45. The Committee wishes to bring to the House’s attention direct intervention by the Attorney-General on behalf of the Government that has had a negative impact upon the evidence provided to the Committee by Victorian Government departments/witnesses.

46. The Committee received a letter from the Attorney-General on 26 September 2007 advising that the Government believes the Committee’s terms of reference are limited to a definition of public land as set out in Administrative Arrangements Order No. 58, as opposed to a broader common understanding of public land. A copy of this letter is provided in Appendix 8.

47. The Attorney-General’s letters to the Committee and potential witnesses suggests that the 1988 Administrative Order No.58 distinguishes between public land (land with a public importance that means it cannot be sold) administered by one Minister and Government land, which can be sold (administered by another Minister).

48. The Attorney-General invited the Committee to consider its terms of reference in light of his advice and clarify its interpretation of the reference and/or take action to amend them. Further, the Attorney-General advised the Committee that until the matter is clarified, the Government will be advising Government officials to provide information consistent with the Administrative Arrangements Order No.
58. Evidence provided by Government witnesses at public hearings confirmed that the Attorney-General had provided such advice with respect to each departmental appearance in public hearings.

49. At its meeting on 9 October 2007, the Committee resolved to write to the Attorney-General advising that it did not accept the Government’s narrow interpretation of ‘public land’, and requested that the Government reconsider its position on the matter. The Committee advised the Attorney-General:

During the lengthy debate in establishing the Committee, Members of the Legislative Council made numerous references to public land in broad terms and highlighted a number of public land sites that could form part of the select committee’s investigations. It is clear from this debate that Members did not attempt to limit the Committee’s Terms of Reference to any narrow interpretation of ‘public land’.

The Committee’s interpretation of the scope of its Reference and the meaning of ‘public land’ is derived from this establishing debate and resolution. Accordingly, the Committee has proceeded to call for submissions and take evidence on the broader and generally accepted interpretation of ‘public land’.

A list of public land sites referred to by Legislative Council Members in the 2 May 2007 establishing debate is provided in Appendix 9.

50. On 29 October 2007, the Attorney-General reconfirmed the Government’s limited interpretation of the Committee’s terms of reference and advised that the Government remains willing to co-operate with any actions taken to clarify the Committee’s terms of reference. A copy of this letter is provided in Appendix 10.

51. In order to seek further advice on this matter, the Committee subsequently wrote to the Clerk of the Legislative Council on 30 October, attaching copies of the correspondence between the Committee and the Attorney-General, seeking his opinion on whether the Committee’s terms of reference in relation to the definition of ‘public land’ are limited by either government or industry practice or administrative arrangements orders; and seeking advice on the options available to the Committee to progress the matter.

52. On 31 October 2007, the Clerk of the Legislative Council wrote to the Committee advising:

The terms of reference delegated to a select committee of the House may be interpreted by the Committee as it sees fit. Although the Government, as with other entities providing information to, or assisting the Committee in some way, is entitled to express a view in this respect, no other view may be
imposed on the Committee’s interpretation of the terms of reference. It is simply a matter for the Committee, or the House itself, to determine. This principle is well established in Erskine May’s Parliamentary Practice (23rd ed, 2004), which states at page 743:

A select committee possesses no authority except that which it derives by delegation from the House. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference). The interpretation of the order of reference of a select committee is, however, a matter for the committee.

Notwithstanding this principle, it is open to a member to seek the House’s further consideration of the terms of reference. If, in the House’s opinion, the Committee has interpreted its terms of reference erroneously or wishes to reaffirm, clarify or even amend the terms, the House is at liberty to do so by way of a resolution expressing such a view. This latter approach is one option that could be considered in answer to your second question about how the Committee should proceed. However, in my view this option should only be considered if the Committee has serious doubts that its capacity to effectively undertake its inquiry is being adversely affected by issues concerning its terms of reference.

A copy of this letter is provided in Appendix 11.

53. In accordance with the Clerk’s advice, the established parliamentary practice referred to above, and the Attorney-General’s request that the Committee clarify its interpretation of the reference, the Committee resolved on 8 November 2007 to adopt the following definition of public land:

That with respect to the terms of reference for the Select Committee on Public Land Development, established by way of Council resolution on 2 May 2007, the Committee notes that reference to ‘public land’ refers broadly to the generally accepted dictionary definition of public land and is not limited by any legislative or administrative arrangements order, or by any special meaning in government or industry practice.

For the purposes of the select committee investigations, the Committee notes that it is commonly accepted that public land includes, but is not limited to:

- Crown land;
- Land vested in or owned by a Minister, government department, statutory corporation, public authority or municipal council;
- Land otherwise used for a public purpose.

54. On 13 November 2007, the Committee wrote to the Attorney-General providing a copy of the Clerk’s letter and advising of its definition of public land (see Appendix 12).
55. The Attorney-General responded to the Committee on 23 November confirming the Government maintains its interpretation of the Committee’s terms of reference (see Appendix 13).

56. The Committee notes in recent public hearings, various non-government witnesses including the Municipal Association of Victoria, Interface Councils, and Save Our Suburbs group, all stated their understanding of the term public land is that which is commonly understood in the community, that is, not private land; and is therefore the definition that their submissions and evidence are based on. All agree that public land needed to be defined broadly in line with community understanding and expectations.

4. Input of Victorian Government Departments

4.1 Request for Private Background Briefings

57. At the commencement of the Inquiry, the Committee agreed to seek informal private background briefings with relevant State Government departments in order to assist members of the committee to understand relevant Government policies, programs and practices. On 7 June 2007, the Committee wrote to the Minister for Finance and Minister for Planning, and Department Secretaries of Treasury and Finance, and Sustainability and Environment, seeking background briefings in June.

58. On 16 July 2007, the Minister for Planning declined the Committee’s request for a background briefing (see Appendix 14). On 17 July, the Minister for Finance similarly declined the Committee’s request (see Appendix 15). Both Ministers advised that rather than provide a background briefing at the start of the Inquiry, it was decided that priority would be given to the development and preparation of a formal submission by 28 September 2007.

59. In order to assist the Committee in its deliberations, the Minister for Finance provided background material which sets out the Victorian Government’s policies in respect to the sale and development of public land. The Minister for Planning provided copies of various Melbourne 2030 policy documents and Green Wedge Management Plan documents.

60. The Committee notes that the letters from both Ministers and relevant policy documents did not refer to any narrow definition of public land contained in
Administrative Arrangements Order No. 58. The first time the Committee was made aware the Government had an issue with the terms of reference was in the Attorney-General's letter of 26 September 2007.

4.2 Request for Public Land Data

61. On 23 August 2007, the Committee wrote to all State Government departments seeking factual information with respect to:

- the sale and/or proposed sale of public land;
- any transfer of public land between Government departments, entities or local government;
- any significant change in land use; and/or
- any redevelopment of public land.

Departments were given until 28 September 2007 in which to provide the data.

62. Consistent with the Attorney-General’s limited interpretation of the terms of reference referred to in paragraphs 46-48 above, no Government department has provided the information requested to date. The Committee is in the process of following this matter up with all Government departments.

63. Three Government departments subsequently gave evidence in public hearings (see below), but could not guarantee that any public land data would be made available to the Committee.

64. The Committee notes with concern that some departmental evidence cast doubt on the existence of a definitive list of such data held by departments individually or centrally. This is incongruous given the existence of a 2007/08 Budget output measure with targets for the sale of public land.

4.3 Invitations to Major Projects Victoria and Parks Victoria to Attend Public Hearings on 26 and 27 September 2007 respectively

65. On 11 September 2007, the Committee wrote to the Secretary of the Department of Infrastructure seeking the attendance of relevant officers from Major Projects Victoria (MPV) to conduct a site visit at the Kew Residential Services site and to give evidence at a public hearing in Kew on 26 September.

66. The Executive Director of Major Projects Victoria wrote to the Committee on 20 September advising that MPV staff would not be providing evidence on the
specified hearing date as it was two days prior to the close of written submissions and completion of the Victorian Government submission. The Committee notes that MPV agreed to conduct the guided site visit on 26 September, and is grateful for the co-operation and support of the relevant MPV officers on the day.

67. On 17 September 2007, the Committee wrote to the Chief Executive of Parks Victoria seeking the attendance of relevant officers from Parks Victoria to conduct a site visit at the Devilbend Reserve and to give evidence at a public hearing on 27 September.

68. The Committee acknowledged that Parks Victoria does not have ‘ownership’ nor a management relationship for a 40 hectare land parcel excised from Devilbend Reserve. Nevertheless, the Committee was interested in discussing the conservation values of the park, the rezoning of the land, key challenges regarding the future management of the park and the function and work to date of the Advisory Group for Devilbend Reserve.

69. Parks Victoria declined the invitation to give evidence at the public hearings scheduled for 27 September however provided relevant officers to conduct a site visit. The Committee is grateful for the co-operation and support of the relevant Parks Victoria officers who conducted the guided site visit on the day.

70. The Committee is disappointed that Major Projects Victoria and Parks Victoria declined to appear at these hearings along with other witnesses and has re-invited both Major Projects Victoria and Parks Victoria to give evidence on 13 December 2007.

4.4 Invitations to Key Victorian Government Departments to Attend Public Hearings on 1 October 2007

71. On 5 September 2007, the Committee invited the Department of Treasury and Finance, and Department of Planning and Community Development to attend public hearings on Monday 1 October 2007. A similar invitation was issued to the Department of Sustainability and Environment to also attend a hearing on 1 October.

72. In the subsequent weeks, the Committee secretariat contacted the Department of Treasury and Finance to seek confirmation as to whether the Departments would accept the invitations. Having received no such confirmation, the Committee
secretariat emailed the three respective Departmental Secretaries to seek confirmation of their Departments’ attendance.

At 5.15 p.m. on Friday 28 September, a letter from the Minister for Finance was hand-delivered to the Committee secretariat enclosing the Victorian Government’s formal written submission to the Inquiry and advising that it was not appropriate for any public officials to attend the public hearings scheduled for 1 October 2007 as it was too soon after the finalisation of the Government’s formal written submission (see Appendix 16). Having received this last minute advice, the Committee was required to cancel arrangements for the hearings scheduled for the following Monday morning.

4.5 Invitation to Department of Treasury and Finance to Attend Public Hearing on 29 October 2007.

73. The Secretary of the Department of Treasury and Finance accepted the Committee’s invitation to nominate relevant senior officers to give evidence on 29 October 2007 in respect to Government policy relating to the sale and disposal of public land. The Secretary nominated Ms Trudy Hart, Director of Land and Property Group; and Mr Ian Gibson, Solicitor to Treasury and Finance, to represent the Department.

74. The Department of Treasury and Finance witnesses provided limited evidence based on instructions to them by the Attorney-General consistent with his advice to the Committee referred to in paragraphs 46-48 above. The Committee notes that there are still some matters outstanding from this hearing that will be followed up with the Department.

4.6 Invitation to Department of Sustainability and Environment, and Parks Victoria to Attend Public Hearings in Port Campbell and Apollo Bay.

75. On 15 October 2007, the Committee wrote to the Secretary of the Department of Sustainability and Environment seeking the attendance of appropriate regional department officers to give evidence at hearings in Port Campbell and Apollo Bay to discuss redevelopment of the Port Campbell headland, Apollo Bay Harbour Precinct and Warrnambool Golf Course.
76. In the week preceding those hearings, the Committee secretariat received verbal advice from DSE that representatives would attend hearings. After a number of attempts to confirm this advice, the Committee secretary wrote to DSE seeking written confirmation. On 2 November, Mr Peter Harris, Secretary of DSE, wrote to the Committee advising that appropriate departmental officers would not be made available to give evidence at the Port Campbell and Apollo Bay hearings (see Appendix 17).

77. The Committee was particularly concerned over two aspects of Mr Harris’ letter. Firstly, the Committee’s believes it was inappropriate for Mr Harris to claim that written submissions to the Inquiry and proposed hearings focussing on issues regarding Port Campbell, Warrnambool and Apollo Bay fall outside of the scope of the Committee’s terms of reference.

78. Further, the Committee believes Mr Harris’ decision to not allow departmental staff to give evidence represents inappropriate interference with witnesses. In particular, the Committee notes Legislative Council Standing Order 18.11 which states: ‘If it appears that any person has been directly or indirectly endeavouring to deter or hinder any person from appearing or giving evidence, such person may be declared guilty of contempt’.

79. Mr Harris and other senior DSE officers accepted a subsequent invitation to give evidence in Melbourne on 19 November 2007 (see section 4.7 below).

80. The Committee also invited Parks Victoria to attend the Port Campbell and Apollo Bay hearings but again, relevant officers were not made available to give evidence.

4.7 Invitation to Department of Sustainability and Environment to Attend Public Hearing on 19 November 2007

81. The Committee invited senior officers from the Department of Sustainability and Environment to attend a public hearing on 19 November 2007. This invitation was accepted and evidence was received from Mr Peter Harris, Secretary; Ms Caroline Douglas, Director, Public Land Use & Development; and Mr Maurice Grealy, Senior Project Officer.
82. Further to section 4.6 above, the Committee reports to the House its concern over the evidence provided at this hearing by Mr Peter Harris, Secretary, Department of Sustainability and Environment. In particular, the Committee highlights Mr Harris was unco-operative in refusing to answer a number questions on the basis that he believed such questions were outside the scope of the Committee’s terms of reference.

83. The Committee notes that Government witnesses provided limited evidence siting their obligations under the Code of Conduct for Victorian Public Sector Employees to appear as a representative of a Minister. The Committee further notes that the Code of Conduct also requires public sector employee witnesses to be co-operative and frank when giving factual information before a Committee hearing.

84. The failure of the Department of Sustainability and Environment to answer a range of questions relating to the sale and/or alienation of public land is contrary to its overall objectives stated on its website as being ‘Victoria’s lead agency for sustainable management of water resources, climate change, bushfires, public land, forests and ecosystems’.

4.8 Invitation to Department of Planning and Community Development to Attend Public Hearing on 27 November 2007

85. The Committee invited senior officers from the Department of Planning and Community Development to attend a public hearing on 27 November 2007. This invitation was accepted and evidence was received by Mr Yehudi Blacher, Secretary; and Ms Genevieve Overell, General Manager, Planning, Heritage and Urban Design.

86. As part of his evidence, Mr Blacher commented on the role of the Department of Sustainability and Environment in assessing whether surplus land can be classified as public land not for sale or as government land which may be considered for future sale. The Committee intends to further investigate this process with Government departments in order to better understand the Government’s narrow interpretation of public land as it applies to all submissions and evidence received during the Inquiry.
4.9 Conclusions Relating to Attorney-General Intervention and Related Input of Government Departments

87. The Committee reports to the Legislative Council that the intervention by the Attorney-General to restrict the Committee’s investigations has significantly limited the input of Victorian Government departments to the Inquiry. As a result of the Attorney-General’s intervention including advice to Government departments, a number of Government officers appearing as witnesses have been placed in a position of declining to answer questions and consequently providing limited evidence. Further, departments have declined to provide basic factual information on the sale, transfer or redevelopment of public land. However, the Committee notes that when asked, witnesses asserted they would provide the information to the Committee if the Legislative Council clarified the Committee’s Terms of Reference to bring matters within the Terms of Reference.

88. The Committee believes such obstructions shows discourtesy not only to the Select Committee and the Legislative Council, but to the 165 individuals and organisations that have, in good faith, put forward their concerns relating to the sale or alienation of a public land. To date, the Government has not provided the proper level of assistance to the Committee that would be expected by the Victorian community.

89. The Committee rejects the narrow definition of ‘public land’ as outlined by the Attorney General and notes the Government’s definition of ‘public land’ is at variance with the common public understanding of the term and is at variance with the understanding of Members of the Legislative Council during debate on establishing the Select Committee on 2 May 2007 (see Appendix 7). The Committee maintains that narrow definitions of land types by governments through administrative arrangements orders should have no special standing or necessary relevance for the Committee’s terms of reference and broader public input to an Inquiry.

90. The Committee asserts its right to interpret its terms of reference within the establishment resolution as it sees fit. This right is supported by established parliamentary practice and advice from the Clerk of the Legislative Council. The Committee’s adoption of a definition of public land is within its terms of reference and will provide assistance to all witnesses.
91. The Committee believes the extraordinary attempt by the Attorney-General, on behalf of the Government, to define a Legislative Council select committee terms of reference represents a direct interference in the operations of the Committee and the role of the Legislative Council. It is the Committee’s view that the Attorney-General’s intervention is simply a device to obstruct the Committee’s activities, frustrate its progress and to defy the will of the Legislative Council.

Committee Room
3 December 2007
APPENDIX 1

Establishing Resolution

On 2 May 2007 the Legislative Council agreed to the following Resolution:

1. A Select Committee of 7 Members be appointed to inquire into —
   (a) the sale or alienation of public land for development;
   (b) the sale or alienation of public open space for the purposes of private development; and
   (c) the sale and development of public land and the relationship to the Melbourne 2030 policy and Green Wedges.

2. The Committee will consist of 2 Members from the Government Party nominated by the Leader of the Government, 2 Members from the Opposition nominated by the Leader of the Opposition, 1 Member from The Nationals nominated by the Leader of The Nationals, 1 Member from the Australian Greens nominated by the Australian Greens Whip and Mr Peter Kavanagh, MLC from the Democratic Labor Party.

3. The Members will be appointed by lodgement of the names with the President by the persons referred to in paragraph (2) no later than 4.00 p.m. on Friday, 4 May 2007.

4. The first meeting of the Committee must be held no later than 4.00 p.m. on Monday, 21 May 2007.

5. The Committee may proceed to the despatch of business notwithstanding that all Members have not been appointed and notwithstanding any vacancy.

6. 4 Members of the Committee will constitute a quorum of the Committee.

7. The Chair of the Committee will be a non-Government Member and the Deputy Chair will be a Government Member.

8. The Committee will advertise its terms of reference and call for submissions and all such submissions received by the Committee will be treated as public documents unless the Committee otherwise orders.

9. The Committee may commission persons to investigate and report to the Committee on any aspects of its inquiry.

10. The Committee will present its final report to the Council no later than 30 June 2008.
11. The presentation of a report or interim report of the Committee will not be
demed to terminate the Committee's appointment, powers or functions.
12. The foregoing provisions of this resolution, so far as they are inconsistent with
the Standing Orders and Sessional Orders or practices of the Council will
have effect notwithstanding anything contained in the Standing or Sessional
Orders or practices of the Council.
APPENDIX 2

List of Written Submissions Received

1. Mr Hans Roleff, Ferntree Gully
2. Port Campbell Community Group
3. Kyneton Mechanics Institute
4. Mr John McLennan, Broadmeadows
5. The Hon. A. J. Hunt, Mornington
6. Boroondara Resident's Action Group
7. Maribyrnong Resident's Association
8. Kew Cottages Parents' Association Inc.
9. The Rockley Gardens Precinct Group
10. Devilbend Landcare Group
11. Moreland City Council
13. Moira Shire Council
14. Beechworth Old Gaol Action Group
15. Friends of Merri Creek
16. Friends of the Bellarine Hills
17. Manningham City Council
18. Dandenong Mechanics Institute Inc.
19. The Carlton Residents Association Inc.
20. Ms Marg Gaskell and Ms Joy Foster, Co-ordinators of PARKS, Bendigo
21. Ms Angela Munro, Parkville
22. Heatherton Landowners Executive
23. The Marchese brothers, Heatherton
24. Ms Raisa and Mr Peter Rowe, Five Ways
25. City of Whitehorse
26. Ms Anne Sgro, Coburg
27. Murrindindi Shire Council
28. Mr Trevor Watts & Ms Yvonne Waugh, Kinglake
29. Koonung Mullum Forestway Association
30. Ms Mary Drost, Convenor - Planning Backlash
31. Ms Pamela Lloyd, West Brunswick
32. Mr Pasquale & Ms Margherita Bernardo, East Oakleigh
33. Ms Marilyn Canet, Taylors Lakes
34. Ms Catherine Pearson, Friends of the Melbourne Wildlife Sanctuary and Wildlife Reserves
35. Mr Alan & Ms Jennifer Rowe, Five Ways
36. Devilbend Foundation Inc.
37. Friends of the Maribyrnong Valley Inc.
38. Mordialloc Beaumaris Conservation League Inc.
39. Mr Maurice Schinkel, Cowes
40. Frankston City Council
41. Mr Peter Brohier, Caulfield
42. Residents 3000 Inc.
43. Cardinia Ratepayers & Residents Association Inc.
44. Greater Shepparton Botanic Gardens Association Inc.
45. Notting Hill Community Association
46. Mr John Knell, Wantirna
47. Geelong Environment Council
48. Darebin Appropriate Development Association
49. West of Elgar Residents’ Association Inc.
50. Mr John Purdy, Wantirna
51. City of Whittlesea
52. Glen Eira Residents Association Inc.
53. Mr Frank Penhalluriack, Caulfield
54. National Trust
55. Merri and Edgars Creeks Parkland Group
56. Colac Otway Shire
57. Mr M. J. Jackson, Kew Cottages Coalition
58. Mr Geoff Harris, Kew Cottages Coalition
59. Mr Don Anderson, Kew Cottages Coalition
60. Shire of Strathbogie
61. Land Owners Rights Association Inc, Safety Beach
62. Mullum Mullum Festival Committee
63. Ms Jennette Wade, Cardinia
64. Maroondah City Council
65. Ms Alison Walpole, Whorouly South
66. Bayside City Council
67. Ms Bobby Koroneos, Keilor Downs
68. Ms Janis Rossiter, Seddon
69. Mr Don & Ms Emma Butler, Euroke
70. Dr Melissa McCulloch, Greensborough
71. City of Stonnington
72. Mr Michael & Ms Kerry Shanahan, Greensborough
73. Ms Margaret Ryan, North Caulfield
74. Brian Duvoisin, Nunawading
75. Interface Councils
76. Australian Labor Party, Geelong West Branch
77. Mr Dennis O’Connell, Thornbury
78. Mr Peter Edhouse, Hastings
79. Mr Peter Dickinson, Marysville
80. Mrs Elva Mattock, Euroke
81. Mrs Lucia Morham, Euroke
82. Mr E.G. Stuckey, Apollo Bay
83. HM Leisure Planning
84. Ms Ronti Basiri, Mordialloc
85. Mr Jim Lowden, Donvale
86. VicRoads
87. Mr Matt Sheppard, Greensborough
88. Friends of Yarra Valley Parks
89. Dr Svetlana Ryhikh, Greensborough
90. Venus Bay Wetlands Project
91. Gippsland Carers Association
92. City of Moonee Valley
93. Moreland City Council
94. Neil Longmore, Gellibrand River
95. Mr Paul Rumpf, Parwan
96. Carlton Residents’ Association and Carlton Gardens Group
97. Toorak Village Residents Action Group Inc
98. Latrobe City Council
99. Nillumbik Ratepayers Association
100. Municipal Association of Victoria
101. City of Greater Dandenong
102. Mr Andrew Hay, Mentone
103. Construction Material Processors Association Inc.
104. Mr Frederick Olsson & Mrs Beverly Olsson, Park Orchards
105. Warnambool Golf Club
106. Ms Diane Brooker, Greenborough
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<tr>
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<th>Name of Individual/Group</th>
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<tr>
<td>107.</td>
<td>Ms Marina Lewis, Gellibrand River</td>
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<td>108.</td>
<td>Dr Marion Manifold, Camperdown</td>
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<td>110.</td>
<td>Mr Greg Alabaster, Moorabbin</td>
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<td>111.</td>
<td>Malvern East Group</td>
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<td>112.</td>
<td>Unchain St Kilda</td>
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<td>113.</td>
<td>Queenscliffe Community Association Inc.</td>
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<td>114.</td>
<td>Mr Geoffrey Gordon, Mt Eliza</td>
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<td>115.</td>
<td>Mr Paul Cleaves, Wantima</td>
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<td>116.</td>
<td>Protectors of Public Land</td>
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<td>117.</td>
<td>Friends of Chicquita Park</td>
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<td>118.</td>
<td>North &amp; West Melbourne Association Inc</td>
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<td>119.</td>
<td>Save Albert Park Inc.</td>
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<td>120.</td>
<td>Vegetable Growers’ Association of Victoria Inc.</td>
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<td>121.</td>
<td>Mr Kevin Chamberlin, President, Protectors of Public Land</td>
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<td>122.</td>
<td>Mrs Dianne Ashton, Hastings</td>
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<td>123.</td>
<td>Ms Heidi Victoria M.P., State Member for Bayswater</td>
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<td>124.</td>
<td>Glen Eira Community Association</td>
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<td>125.</td>
<td>City of Darebin</td>
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<td>126.</td>
<td>Royal Park Protection Group</td>
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<td>127.</td>
<td>City of Boroondara</td>
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<td>128.</td>
<td>Dendy Park Association</td>
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<td>129.</td>
<td>Save Barowon Heads Alliance Inc</td>
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<td>130.</td>
<td>Ms Gila Schnapp and others, Diamond Creek</td>
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<td>131.</td>
<td>Save Our Suburbs</td>
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<td>132.</td>
<td>Nillumbik Shire Council</td>
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<td>133.</td>
<td>Friends of Caulfield Park</td>
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<td>134.</td>
<td>Cr Rosemary West, Edithvale</td>
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<td>135.</td>
<td>Green Wedges Coalition</td>
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<td>136.</td>
<td>Mr James Hay, Glen Iris</td>
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APPENDIX 3
Letter from Major Projects Victoria (29-09-2007)

Department of Infrastructure

Mr David Davis
Chair
Select Committee on Public Land Development
Parliament House
EAST MELBOURNE VIC 3002

Attention Mr Richard Willis

Dear Mr Davis

LEGISLATIVE COUNCIL SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

I write in response to the letter sent to the Secretary of the Department of Infrastructure from Richard Willis, Secretary of the Select Committee on Public Land Development on 11 September 2007. In that letter Mr Willis:

- requested that public hearings be held in the Old Pharmacy Building,
- requested that officers from Major Projects Victoria (MPV) be available to guide a site visit at 10:00 am at the Kew Residential Services site on 26 September, and
- invited the attendance of MPV officials at the proposed public hearing on 26 September 2007.

In relation to these matters Ms Macdonald, Manager Legal Services in DOI, has spoken to Ms Caroline Williams at the Committee. Ms Williams was advised that the Old Pharmacy Building is not available for use on 26 September 2007. I understand that the Committee has made alternative arrangements off site for the hearing.

Ms Tania Orr, Project Director, Major Projects Victoria, will be available to guide a site visit at 10.00am. Ms Orr will meet the Committee at the front of the KRS admin building. The site is under the management of Walker Corporation, and as construction works are underway on the site, access will, for safety reasons, be limited to an inspection the whole site except for the stage one construction area. The tour will include an inspection of the first complete community house. Ms Orr’s role in the visit will be confined to providing factual advice on the layout of the site and construction timetable.

Ms Williams was also advised that, as the closing date for written submissions to the Committee is 28 September, two days after the site visit and public hearings, at this time no officials from MPV will be attending the public hearing to provide evidence.

You may contact Ms Macdonald on 9655 6720 or by email at karen.macdonald@doi.vic.gov.au if you require any clarification.

Yours sincerely

[Signature]

Sean Sweeney
Executive Director
20/9/2007

cc. Howard Ronaldson, Secretary, Department of Infrastructure
cc. Theo Theophanous, Minister for Major Projects
Select Committee on Public Land Development – First Interim Report

APPENDIX 4

Letter from Parks Victoria (18-09-2007)

18 September 2007

Mr Richard Willis
Secretary
Select Committee on Public Land Development
Legislative Council
Parliament House, East Melbourne, VIC 3002

Dear Mr Willis

Legislative Council Select Committee on Public Land Development – Devilbend Natural Features Reserve, Mornington Peninsula

Thank you for your advice regarding the proposed site visit and public hearing at the Devilbend Natural Features Reserve (NFR) next Thursday 27 September 2007.

I have discussed this matter with the Parks Victoria Chief Executive’s office this morning and can confirm that Parks Victoria staff will be available to assist with a site tour of Devilbend NFR at noon next Thursday and will provide appropriate vehicles and drivers to transport Committee members and Legislative Council staff through relevant parts of the reserve. The suggested meeting point is Devilbend NFR picnic area (Melways Ref. 152, J5) near the dam wall.

I am not, however, able to accept the invitation to allow Parks Victoria staff to give evidence at the public hearing from 2.00pm to 2.30pm at the Devilbend Golf Club that day.

Parks Victoria is the designated provider of park management services for Devilbend NFR, but does not have ‘ownership’, nor a management relationship for the 40 hectare land parcel excised from Devilbend NFR.

I can be contacted on 9586 9103 or 0419 379 802 to confirm any details regarding the proposed site tour for next week.

Thank you.

Yours sincerely

Christopher McCormack
Chief Ranger Mornington Western Port District
APPENDIX 5

Letter from Devilbend Foundation (12-10-2007)

October 12, 2007

Richard Willis
Secretary, Legislation & Select Committees
Department of the Legislative Council
Parliament House
East Melbourne, 3002

Dear Richard,

Re: Request for Timely Action to Preserve the Integrity of Parks Victoria’s Devilbend Reserve Management Planning

Firstly, we wish to congratulate the Select Committee on Public Land Development on 27th September’s successful Public Hearing on Devilbend Reserve, and to thank you for the opportunity to participate. We were pleased that our Foundation’s strongly-held belief that the 40 ha “Block 1” site should be retained in public ownership was echoed by the local Landcare Group, and sympathetically received by at least several of the Select Committee members.

I am writing to highlight a suggestion that arose in discussion towards the end of the hearing: namely, that Parks Victoria should consider inclusion of the “Block 1” site as one option in their recently-initiated Devilbend Reserve management planning process.

The wisdom of this suggestion strikes us as self-evident: proceeding with the currently-limited focus on the main body of the reserve would preclude the formal assessment of the value of “Block 1” to the State and the community as an integral part of the whole Devilbend Conservation Reserve. Such an assessment of the “Block 1 inclusion” option is crucial to the integrity of the State Government’s decision-making on whether and when to dispose of this asset.

One of our Council members has spoken to Jo Richards of Parks Victoria, and was informed that consideration of the “Block 1 inclusion” option during PV’s management planning process is feasible. However, this would not be undertaken without the direction of the Environment Minister.

Accordingly, we request that the Select Committee exercise its option to issue an interim report of its findings related to the disposal of “Block 1” as a matter of urgency. It should include a strong recommendation to the Environment Minister to direct Parks Victoria to consider the “Block 1 inclusion” option in its management planning process for the Devilbend Conservation Reserve.

Please do not hesitate to contact us for any further information as needed.

Once again, thank you for the opportunity to contribute to the important work of the Select Committee.

Yours sincerely

Janet Oliver
President
Devilbend Foundation Inc.
APPENDIX 6
Letter from Devilbend Landcare Group (14-11-2007)

From: Roger Turner  
Chairman, Devilbend Landcare Group  

Bellwood Farm  
283, Hodgins Road  
Tuross  
Victoria 3915  

Tel/Fax 03 5979 8338  
Rogerturner@swihisol.com.au

The Secretary  
Legislative Council Select Committee on  
Public Land Development  
Parliament House  
Spring Street  
Melbourne 3002  

14 November 2007

Dear Mr Willis  

Disposal of land associated with the Devilbend Reserve  

Reference: Mr Willis’ letter dated 1 November 2007  

Thank you for your letter (the Reference) in which you thank the Devilbend Landcare Group for its submission and input to the inquiries being made by the Select Committee on Public Land Development.  

As you are aware the Group holds strongly the views expressed to the Select Committee with regards the seemingly hasty sale of the Grayden’s Road block of the Devilbend Reserve. The Committee gave every impression that those views would be considered seriously and appropriate recommendations then made to the Government.  

It is thus very disappointing to have seen the Government offer the land for sale by tender only a few days after the Select Committee had held its public hearing. It is quite plain that the Government never had any intention of allowing the Committee time to report let alone any intention of taking its findings seriously.  

I have no doubt that the Chairman of the Select Committee will be registering its own displeasure at this arrogant treatment of the democratic process but would be grateful if the same sentiments could be registered on behalf of the Landcare Group.  

I write and sign on behalf of the Devilbend Landcare Group and in private capacity as a local resident and remain at your disposal for further discussion as you consider appropriate.

Roger Turner  
Chairman  
Devilbend Landcare Group
APPENDIX 7

List of witnesses who gave evidence in public hearings

26 September 2007 – Kew

- Mr Andrew McIntosh MP – State Member for Kew
- Boroondara Residents' Action Group and Planning Backlash
  Mr Jack Roach, Acting President
- Boroondara City Council
  Cr Phillip Healey, Mayor
  Mr Phillip Storer, Acting Chief Executive Officer
  Mr Tom Harrington, Acting Manager, Strategic Planning
- Kew Cottages Parents' Association
  Ms Louise Godwin, Executive Officer
  Mr Leo Waterfall, President
- Kew Cottages Coalition
  Mr Brian Walsh, President
  Mr Don Anderson
  Mr Max Jackson
  Mr Geoff Harris

27 September 2007 – Devilbend

- Mornington Shire Council
  Mr Alex Atkins, Director Sustainable Environment
- Devilbend Foundation
  Ms Jan Oliver, President
  Mr Roger Richards, Vice President
  Dr Brian Cuming, Member
  Mr Jamie Edgerton, Member
- **Devilbend Landcare Group**  
  Mr Roger Turner, Chairman  
  Ms Maria Clarkson, Treasurer  
  Mr Jamie Edgerton, Member  
  Mrs Susan Todd, Member

- **Mr Neale Burgess MP, State Member for Hastings**

8 October 2007 - Parliament House

- **Walker Corporation**  
  Mr John Hughes, Managing Director  
  Mr Mike Randall, Development Manager

29 October 2007 - Parliament House

- **Department of Treasury and Finance**  
  Ms Trudy Hart, Director of Land and Property Group  
  Mr Ian Gibson, Solicitor to Treasury and Finance

7 November 2007 - Port Campbell

- **Sahara J Enterprises**  
  Mr Russell Brown, Geotechnical Engineer

- **Port Campbell Community Group**  
  Dr Marion Manifold

- **Warrnambool Golf Club**  
  Mr Gary Parsons, Club Secretary,  
  Mr Brian Callaghan  
  Mr Steven Lucas

- **Corangamite Shire Council**  
  Ms Sophie Segafredo, Manager, Strategic Planning and Environment

- **Port Campbell Environment Group**  
  Dr Helen Arundel,

- **Ms Julie Brazier, local resident**
• Port Campbell Fisherman's Association  
  Ms Marion Gordon, Secretary

• Protectors of Public Land  
  Ms Julianne Bell, Secretary

**8 November 2007 - Apollo Bay**

• Mr Neil Longmore, Barrister and Solicitor

• Colac Otway Shire  
  Mr Mike Barrow, Manager, Economic Development

• Apollo Bay and Kennett River Public Reserves Committee  
  Mr Gary McPike, General Manager

• Otway Forum  
  Mr John Spencer  
  Mr Neil McGain

• Mr Edward Stuckey, local resident

• Mr Harry Ferrier, local resident

**19 November 2007 - Parliament House**

• Department of Sustainability & Environment  
  Mr Peter Harris, Secretary  
  Ms Caroline Douglas, Director - Public Land Use & Development  
  Mr Maurice Grealy, Senior Project Officer

• Municipal Association of Victoria  
  Ms Liz Johnstone, Senior Planning Adviser,  
  Ms Lisel Thomas, Melbourne 2030 Liaison Officer

**27 November 2007 - Parliament House**

• Department of Planning and Community Development  
  Mr Yehudi Blacher, Secretary  
  Ms Genevieve Overell, General Manager - Planning, Heritage and Urban Design  
  - Planning and Local Government Group
- Hon Alan Hunt, former President of the Legislative Council and former Minister for Planning

- Interface Councils
  Mr J. Francis - Director - Corporate and Economic Development, City of Whittlesea
  Mr D. Jackson - Coordinator - Strategic Planning, City of Whittlesea

- Save our Suburbs
  Mr Ian Quick

**28 November 2007 - Parliament House**

- City of Moonee Valley
  Cr Rose Iser
  Mr Jeremy Wood, Group Manager – City Development

- Green Wedges Coalition
  Ms Rosemary West, Joint Coordinator

- Frankston City Council
  Mr Michael Craighead, Manager - Governance and Customer Relations

**Note:** Transcripts of evidence from the above hearings are available from the Committee’s website below:

APPENDIX 8

Letter from Attorney-General (26-09-2007)

26 SEP 2007

Mr David Davis MLC
Chair
Select Committee on Public Land Development
Parliament House
MELBOURNE VIC 3002

Dear Mr Davis

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

I am writing in relation to your letters dated 23 August 2007 to a number of Departmental Secretaries on behalf of the Select Committee on Public Land Development requesting information with respect to the sale of public land and your subsequent requests to various Government officials that they attend hearings of the Committee.

The Select Committee was appointed to inquire into three matters:
1. the sale or alienation of public land for development;
2. the sale or alienation of public open space for private development; and
3. the sale and development of public land and the relationship to the Melbourne 2030 policy and green wedges.

As you will be aware the authority of the Select Committee derives from the resolution of the Legislative Council appointing the Select Committee and establishing its terms of reference, and the work of a Select Committee is confined to what is covered by its terms of reference.

The Government has considered the scope of the terms of reference of this committee and, in particular, the meaning of “public land” in the context of sale and alienation. The two Acts that govern the sale of Crown land are the Land Act 1938 and Crown Land (Reserves) Act 1978. Neither Act contains a relevant definition of “public land”.

However, since 1988 Administrative Arrangements Order No. 58 as it affects the sale and alienation of land has been used by successive Victorian Government’s to define “public land.” I am attaching a copy of that Order for your information. This definition distinguishes between public land (land with a public importance that means that it cannot be sold) administered by one Minister and Government land, which can be sold (administered by another Minister). This definition has been the basis of all Government practice in relation to the sale and management of Crown land since 1988.
Although there are other and broader definitions of “public land” in Victorian legislation, all of them relate to the protection and management of the physical attributes and integrity of the land, and are unrelated to sale or alienation.

For these reasons, the Government believes that the Select Committee’s terms of reference are limited to the definition of public land as set out in Administrative Arrangements Order No. 58.

I therefore invite the committee to consider its terms of reference in light of this information and clarify its interpretation of the terms of reference and/or take action to amend them.

In the meantime and until this matter is clarified the Government will be advising Government officials to provide information consistent with the Administrative Arrangements Order No. 58.

Yours sincerely,

[Signature]

ROB HULLS MP
Attorney-General

cc. Mr Brian Tee MLC, Deputy Chair, Select Committee on Public Land Development
ORDERS IN COUNCIL

ADMINISTRATIVE ARRANGEMENTS ACT 1983

The Lieutenant-Governor as deputy for the Governor in Council, makes the following order:

Dated 9 February 1988

Responsible Minister:
JOHN CAIN
Premier

LAWRENCE A. FISHER
Clerk of the Executive Council

ADMINISTRATIVE ARRANGEMENTS ORDER (NO. 58) 1988

1. This Order is called the Administrative Arrangements Order (No. 58) 1988.
2. This Order is made under the powers conferred by section 3 of the Administrative Arrangements Act 1983 and under every other available power.
3. This Order takes effect in respect of each item in the Schedule on and after 1 March 1988.
4. In respect of each item in the Schedule a reference to the Old Body in any Act, or any provision of an Act, specified in Column 2 or in any statutory or other instrument made under any Act, or any provision of any Act, specified in Column 2 shall be construed as a reference to the New Body.
5. Where—
   (a) before this Order takes effect a transaction happened in relation to an Old Body,
       then—
       (a) this Order does not affect the validity or continuity of the transaction, and the transaction shall continue and may be completed in relation to the New Body in the same way as it would have been continued and may have been completed in relation to the Old Body if this Order has not been made.
6. In this Order—
   “Body” means Minister, Administrative Unit or Officer.
   “Instrument” includes contract and agreement.
   “Old Body” and “New Body” mean respectively the Body specified in Column 1 and Column 2 of each item in the Schedule.
   “Schedule” means the Schedule to this Order.
   “Transaction” includes—
   (a) Agreement, bond, contract, deed or other consensual arrangement whatsoever;
   (b) Action, appeal, arbitration, prosecution or other legal proceeding whatsoever;
   (c) Assignment, charge, lease, mortgage, transfer or other dealing with property whatsoever;
   (d) Loan, guarantee, indemnity or other dealing with money whatsoever;
   (e) Approval, consent, delegation, direction, licence, Order, permit, requirement or other authority whatsoever;
   (f) Notice; and
   (g) Any other act, entitlement or liability in the law whatsoever.

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<th>Item</th>
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<td>1.</td>
<td>Minister for Conservation, Forests &amp; Lands</td>
<td>Land Act, Division 6 of Part I; Subdivision 3 of Division 9 of Part I. Section 209.</td>
<td>Minister for Property &amp; Services</td>
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Schedule
the following: the sale in fee of Crown Lands, the alienation in fee of Crown Lands, sale of the reversionary interest of the Crown in lands that have been alienated for years; alienation of the reversionary interest of the Crown in lands that have been alienated for years.

1. Department of Conservation, Forests & Lands

Land Act, Division 6 of Part 1

Each other provision of the Land Act insofar as it relates to one or more of the following: the sale in fee of Crown Lands, the alienation in fee of Crown Lands, sale of the reversionary interest of the Crown in lands that have been alienated for years; alienation of the reversionary interest of the Crown in lands that have been alienated for years.

2. Director-General of Conservation, Forests & Lands

Land Act, Division 6 of Part 1

Each other provision of the Land Act insofar as it relates to one or more of the following: the sale in fee of Crown Lands, the alienation in fee of Crown Lands, sale of the reversionary interest of the Crown in lands that have been alienated for years; alienation of the reversionary interest of the Crown in lands that have been alienated for years.

Crown Land (Reserves) Act 1978

NOTICE OF INTENTION

The Lieutenant-Governor as deputy for the Governor in Council under section 10 of the Crown Land (Reserves) Act 1978 gives notice of intention to revoke the following temporary reservations:

KEWELL—The temporary reservation by Order in Council of 17 February 1885 of 5466 hectares, more or less, of land in the Township of Eastwell, Parish of Eastwell East as a site for water supply purposes so far only as the portion containing 3750 square metres as indicated by hatching on plan hereunder—(Rs. 2749).

SOUTH MELBOURNE—The temporary reservation by Order in Council of 21 January 1906 of 4040 square metres of land being Crown Allotment 9A, section E, City of South Melbourne, Parish of Melbourne South as a site for Ambulance Station and Ambulance Service Administrative Offices—(Rs. 12570).

YARRAGON—The temporary reservation by Order in Council of 3 November 1884 of 4761 hectares of land in section F, Parish of Yarragon as a site for Racetrack and other purposes of Public Recreation, revoked as to part by various Orders, so far only as the portion containing 2020 square metres as indicated by hatching on plan hereunder—(Rs. 684).
APPENDIX 9

Select Committee on Public Land Development – Establishing Debate Summary

A number of former, current and proposed public land developments were cited in the establishing debate in the Council on the 2 May 2007 as follows:

- Kew Cottages site (Mr Guy, Northern Metropolitan; Mr Viney, Eastern Victoria; Ms Pennicuik, Southern Metropolitan; Mr Davis, Southern Metropolitan; Mr Hall, Eastern Victoria; Ms Coote, Southern Metropolitan; Mr Atkinson, Eastern Metropolitan; Ms Darvenzia, Northern Victoria)
- former Royal Park Psychiatric Hospital site, Parkville (Mr Guy, Northern Metropolitan; Ms Pennicuik, Southern Metropolitan; Mr Davis, Southern Metropolitan; Mr Hall, Eastern Victoria; Ms Coote, Southern Metropolitan)
- showgrounds near Epsom Road (Mr Guy, Northern Metropolitan)
- Devilbend Reserve (Mr Guy, Northern Metropolitan; Ms Pennicuik, Southern Metropolitan; Mr Davis, Southern Metropolitan; Ms Pulford, Western Victoria)
- Notting Hill (Mr Guy, Northern Metropolitan; Mr Hall, Eastern Victoria; Ms Coote, Southern Metropolitan)
- Monterey Secondary College site (Mr Viney, Eastern Victoria)
- former Mornington High School site (Mr Viney, Eastern Victoria)
- Point Nepean Park (Mr Viney, Eastern Victoria; Mr Pulford, Western Victoria)
- Great Otways National Park, marine national parks and sanctuaries (Mr Viney, Eastern Victoria; Mr Pulford, Western Victoria)
- Alpine National Park, Mount McKay (Mr Viney, Eastern Victoria; Mr Tee, Eastern Metropolitan)
- Wilsons Promontory (Mr Viney, Eastern Victoria; Mr Pulford, Western Victoria; Mr Tee, Eastern Metropolitan)
- schools (Mr Viney, Eastern Victoria; Mr Pulford, Western Victoria; Mr Atkinson, Eastern Metropolitan)
- Albert Park (Ms Pennicuik, Southern Metropolitan)
- Abbotsford Convent (Ms Pennicuik, Southern Metropolitan)
- Eastlink tollway (Ms Pennicuik, Southern Metropolitan)
- land near the Frankston quarry, marine site on the north of Port Phillip Bay near Werribee (Mr Davis, Southern Metropolitan)
- Camberwell Station (Mr Davis, Southern Metropolitan; Mr Guy, Northern Metropolitan)
- Melbourne Convention Centre (Mr Davis, Southern Metropolitan; Mr Atkinson, Eastern Metropolitan)
- Docklands (Mr Hall, Eastern Victoria)
- Twelve Apostles (Mr Pulford, Western Victoria; Mr Tee, Eastern Metropolitan)
- Reservations for the Healesville freeway (Mr Atkinson, Eastern Metropolitan)
- Junction Road, Nunawading (Mr Atkinson, Eastern Metropolitan)
- Urban renewal project in Dandenong (Mr Atkinson, Eastern Metropolitan)
- Larundel Psychiatric Hospital (Ms Darvenzia, Northern Victoria)
- Kingsbury Training Centre, Bundoora (Ms Darvenzia, Northern Victoria)
- Plenty Hospital (Ms Darvenzia, Northern Victoria).
APPENDIX 10

Letter from Attorney-General (29-10-2007)

Dear Mr Davis

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Thank you for your letter of 10 October 2007 concerning the Terms of Reference for the Select Committee on Public Land Development.

As you have noted in your letter, there was a lengthy debate in the Legislative Council prior to the Council establishing the Committee. In any Parliamentary debate, different Members may express themselves in their own way on the subject matter of the debate. Clearly, however, once a House has passed a resolution establishing a Parliamentary Committee and defining the Committee’s terms of reference, the Committee’s operation and powers must be governed by the terms of reference as specified in the House’s resolution.

The meaning of the Committee’s terms of reference must depend on the way in which the terms of reference are expressed, having regard where appropriate to relevant government or industry practice (where, for example, the terms of reference use words that have a special meaning in government or industry practice).

As stated in my previous letter to the Committee the Government believes that the Committee’s terms of reference are limited to the definition of public land set out in Administrative Arrangements Order No 58 of 1988. However, the Government remains willing to co-operate with any actions taken to clarify the Committee’s terms of reference.
In the above circumstances, and consistent with my letter of 24 September 2007 and the Minister of Finance’s letter of 28 September 2007, I will be asking relevant Secretaries to ensure that witnesses from their Department are aware of the view taken by the Executive Government on the scope of the terms of reference. A copy of my letter to the Secretary to the Department of Treasury and Finance is attached.

Yours sincerely

[Signature]

ROB HULS MP
Attorney General
APPENDIX 11
Letter from the Clerk of the Legislative Council (31-10-2007)

31 October 2007

Mr Richard Willis
Secretary
Select Committee on Public Land Development
Parliament of Victoria
Spring Street
MELBOURNE VIC 3002

Dear Richard

Re: Select Committee on Public Land Development – Terms of Reference

I refer to your letter dated 30 October 2007 in which the Select Committee on Public Land Development seeks my opinion on whether its terms of reference are limited by definitions of public land expounded by certain other parties and instruments. You have drawn my attention particularly to correspondence from the Attorney-General that the Government believes the Committee’s terms of reference are limited to a definition of public land set out in Administrative Arrangements Order 58, as opposed to a broader, publicly accepted definition of public land.

The terms of reference delegated to a select committee of the House may be interpreted by the Committee as it sees fit. Although the Government, as with other entities providing information to, or assisting the Committee in some way, is entitled to express a view in this regard, no other view may be imposed on the Committee’s interpretation of the terms of reference. It is simply a matter for the Committee, or the House itself, to determine. This principle is well established in Erskine May’s Parliamentary Practice (23rd ed. 2004), which states at page 743:

A select committee possesses no authority except that which it derives by delegation from the House. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference). The interpretation of the order of reference of a select committee is, however, a matter for the committee.

Notwithstanding this principle, it is open to a member to seek the House’s further consideration of the terms of reference. If, in the House’s opinion, the Committee has interpreted its terms of reference erroneously or wishes to reaffirm, clarify or even amend the terms, the House is at liberty to do so by way of a resolution expressing such a view.

This latter approach is one option that could be considered in answer to your second question about how the Committee should proceed. However, in my view this option should only be considered if the Committee has serious doubts that its capacity to effectively undertake its inquiry is being adversely affected by issues concerning its terms of reference.
Please contact me if you require any further information.

Yours sincerely

Wayne Tunneciffe
Clerk of the Legislative Council
APPENDIX 12
Letter to the Attorney-General (13-11-2007)

Hon. Rob Hulls MP
Attorney-General
1 Treasury Place
MELBOURNE VIC 3001

Dear Attorney-General,

Re: Select Committee on Public Land Development

I refer to recent correspondence regarding the scope of the terms of reference for the Select Committee on Public Land Development.

The Committee has considered your request that it clarifies its terms of reference and notes your advice that the Government remains willing to co-operate with any actions taken to clarify these matters.

Accordingly, the Committee has obtained advice from the Clerk of the Legislative Council (see attached) which confirms it is established parliamentary practice that the interpretation of a reference is a matter for the committee or the House.

The Committee has considered the Clerk’s advice and has resolved as follows:

That with respect to the terms of reference for the Select Committee on Public Land Development, established by way of Council resolution on 2 May 2007, the Committee notes that reference to “public land” refers broadly to the generally accepted dictionary definition of public land and is not limited by any legislative or administrative arrangements order, or by any special meaning in government or industry practice.

For the purposes of the select committee investigations, the Committee notes that it is commonly accepted that public land includes, but is not limited to:

- Crown land
- Land vested in or owned by a Minister, government department, statutory corporation, public authority or municipal council; and
- Land otherwise used for a public purpose.

In light of the above, the Committee requests you reconsider the Government’s position on this matter and ensure that Government departments and future departmental officers appearing as witnesses, provide evidence consistent with the Committee’s interpretation of its reference and broader definition of public land.

Yours sincerely,

RICHARD WILLIS
SECRETARY
SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT
APPENDIX 13

Letter from Attorney-General (23-11-2007)

23 NOV 2007

Mr David Davis MP
Chairman
Select Committee on Public Land
Parliament House
EAST MELBOURNE 3002

Dear Mr Davis

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

I refer to the letter from the Secretary of your Committee dated 13 November 2007 which informs me of the Committee’s interpretation of its terms of reference and asks that I reconsider the Government’s position on this matter.

I have reconsidered the Government’s position. It has not changed. I will therefore continue to advise Government witnesses of the Government’s position as previously articulated.

The Secretary’s letter refers to advice of the Clerk of the Legislative Council that it is established parliamentary practice that the interpretation of a reference is a matter for the committee, or a House. I note, however, that the passage of Enskine May relied on by the Clerk also provides that a committee possesses no authority except that derived from its order of reference. It is the Government’s view that the interpretation adopted by the Committee exceeds the power granted. I note that Clerk has advised that the House may clarify or amend the terms of reference of a Select Committee.

Yours sincerely

ROB HULLS MP
Attorney General
APPENDIX 14

Letter from Minister for Planning (16-07-2007)

Minister for Planning

16 JUL 2007

Ref: DSE04104

Mr David Davis MLC
Chair
Select Committee on Public Land Development
Legislative Council
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Davis

INQUIRY INTO SALE AND DEVELOPMENT OF PUBLIC LAND

Thank you for your recent letter on behalf of the Select Committee on Public Land Development concerning an informal, private background briefing.

I wish to advise that priority is being given to the development of a formal submission to the Select Committee. Nevertheless to assist the Select Committee in its inquiry, I have enclosed a series of background documents that provide information on Melbourne 2030 and green wedges policy, including:

- A copy of the Metropolitan Strategy “Melbourne 2030: Planning for sustainable growth”;
- The Melbourne 2030 Advisory Note and five Implementation Plans for planning authorities and stakeholders concerning operation of the Metropolitan Strategy;
- Copies of the “Melbourne 2030 Annual Community Update”;
- A copy of the “Principles, Issues and Guidelines” document to assist Councils in the preparation of their Green Wedge Management Plans; and
- A copy of the General Practice Note “Preparing a Green Wedge Management Plan” that sets out the general requirements for councils when developing such plans.

I trust that this information will prove to be a useful resource for the Select Committee concerning Melbourne 2030 and green wedges policy.

Yours sincerely,

JUSTIN MADDEN MLC
Minister for Planning

Victoria
The Place To Be

Privacy Statement
Any personal information about you or a third party in your correspondence will be protected under the provisions of the Information Privacy Act 2008. It will only be used or disclosed to appropriate Ministers, Statutory Authorities, or Departmental staff in respect of the purpose for which it was provided, unless required or authorised by law. Requests about access to information about you held by the Department should be directed to the Manager Privacy, Department of Sustainability & Environment, PO Box 551, East Melbourne, 3002.
Letter from Minister for Finance (17-07-2007)

Dear Mr Davis,

INQUIRY INTO SALE AND DEVELOPMENT OF PUBLIC LAND AND OPEN SPACE

Thank you for your letter dated 7 June 2007, on behalf of the Select Committee on Public Land Development, requesting an informal private background briefing from the Department of Treasury and Finance.

I understand that you have also invited the Secretary of the Department of Treasury and Finance to provide a written submission to the inquiry by 28 September 2007.

As you would be aware, responsibility for the sale and development of public land is spread across a number of departments and agencies. To ensure the Committee receives a considered and comprehensive response, it has been decided that priority should be given to the development and preparation of a formal submission, as requested.

In the meantime, and to assist the Committee in its deliberations, I am pleased to attach background material which sets out the Victorian Government’s policies in relation to the sale and development of public land.

Yours sincerely,

TIM HOLDING MP
Minister for Finance, Workcover
and the Transport Accident Commission

cc: Mr Brian Tee MLC, Deputy Chair, Select Committee on Public Land Development
APPENDIX 16
Letter from Minister for Finance (28-09-2007)

Minister for Finance

Mr David Davis MLC
Chair
Select Committee on Public Land Development
Legislative Council
Parliament House
MELBOURNE VIC 3002

Dear Mr Davis

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

I refer to the Select Committee’s various requests to Departmental Secretaries for information relating to the sale of public land and for Government officials to provide evidence at a public hearing of the Committee on 1 October 2007.

The Victorian Government is proud of its record in the management and use of public land. The processes that the Government has in place are robust and transparent and ensure that our unique natural environment is protected and that the world class system of parks across the State is maintained.

As outlined by the Attorney-General in his letter to the Committee of 24 September 2007, the Government will provide information and evidence to the Committee consistent with the Committee’s terms of reference.

I am pleased to attach to this letter the Government’s formal written submission to the Committee. This submission comprises a whole of Government response to the Committee’s request for information on the sale of public land processes within Government.

As you are aware, public officials are bound to follow the Guidelines issued by the Department of Premier and Cabinet for appearing before State Parliamentary Committees. These Guidelines seeks to ensure that accurate information is provided to all Parliamentary Committees. The Guidelines envisage that sufficient notice of an appearance will be given to public officials, particularly where complex issues are involved.

It is appropriate that public officials have a reasonable period of time to consider the Government’s submission and any relevant public submissions to the Committee before providing evidence to the Committee at a public hearing.
Given that the closing date for all submissions is 28 September 2007, the Government is of the view that it is not appropriate for any public officials to attend the public hearing scheduled by the Committee for 1 October 2007. The Government will consider the attendance of public officials at future public hearings. They will however only be able to provide evidence to the Committee on subject matter that falls within the Committee’s terms of reference.

In addition, public officials would expect to be thoroughly prepared on matters on which they might be asked to give evidence. For that to be possible, it would be appropriate that the Committee will provide witnesses with, in addition to an appropriate period of notice, notice of the specific matters regarding which their evidence is sought.

Yours sincerely

TIM HOLDING MP
Minister for Finance, Works, Transport, and the Transport Accident Commission

cc Mr Brian Too MLC, Deputy Chair, Select Committee on Public Land Development
APPENDIX 17

Letter from the Secretary, Department of Sustainability and Environment (21-11-2007)

Dear Mr Willis

LEGISLATIVE COUNCIL SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

I refer to your recent letters on behalf of the Legislative Council Select Committee on Public Land Development requesting regional officers of the Department of Sustainability and Environment to be made available to give evidence at the Select Committee public hearings on 7 and 8 November 2007 to be held at Port Campbell and Apollo Bay.

I note that the Select Committee would like to discuss issues that have been raised in written submissions to in relation to its inquiry concerning Apollo Bay, Port Campbell and Warrnambool Golf Course.

However, the specific issues raised in your letter, and in the written submissions to the inquiry listed on your website in regard to Apollo Bay, Port Campbell and Warrnambool Golf Course, fall outside the scope of the Select Committee’s terms of reference.

Consistent with the position put by the Attorney-General, in his correspondence with the Chair of the Select Committee of 24 September 2007 and 29 October 2007, these issues will not be able to be addressed by any officer attending the hearings in Port Campbell and Apollo Bay. As a result, I am not in a position to make Departmental officers available to give evidence at these hearings at this time.

I am willing to make appropriate officers of my Department available at subsequent hearings to provide evidence on Government policy in line with the position put to the Chair of the Select Committee by the Attorney General in his letter of 29 October 2007.

Yours sincerely

PETER HARRIS
Secretary

[Signature]
EXTRACTS FROM THE PROCEEDINGS

The following extracts from the Minutes of the Proceedings of the Committee show Divisions which took place during the consideration of the draft Interim Report on 3 December 2007.

The Committee divided on the respective questions –

1. That paragraphs 14, 18, 20, 22, 27, 30, 31, 32, 34, 45, 46, 47, 56, 78, 82, 87 and 91 be amended.

2. That paragraphs 19, 21, 22, 27, 30, 31, 32, 42, 45, 49, 50, 53, 56, 60, 62, 63, 64, 66, 68, 70, 78, 82, 86, 88, 89, 90 and 91 stand part of the Report.


The result of the divisions are detailed below:

Paragraph 14
The Committee received several written submissions relating to the development of the Kew Residential Services (KRS) site (formerly Kew Cottages). The KRS site is located in north west Kew and covers 27 hectares on the west side of Princess St. In 2001, the Premier announced plans to redevelop the KRS site with the 480 people then living at the site to be moved to community homes throughout the state, including 100 who would move into community housing on the KRS site. Major Projects Victoria (MPV) is facilitating the development of the site in conjunction with Walker Corporation.

Amendment moved by Mr B L Tee – That paragraph 14 be amended with the following words inserted before the last sentence: “At the time of the announcement, the project had in principle support from the Liberal Party.”

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 3
Mr P D Kavanagh
Mr B L Tee
Mr E W Thornley

Noes 3
Mr P R Hall
Mr E J O'Donohue
Ms S M Pennicuik

There being an equality of votes, the Chairman gave his casting vote with the noes.

Amendment negatived.
Paragraph 18

As part of its evidence, Walker Corporation provided the Committee with a copy of the financial model within the Kew Residential Services tender document. In providing this document to the Committee, Walker Corporation requested that the document not be released publicly on the grounds of commercial-in-confidence. The Committee notes that the Victorian Government has not published these tender documents in full on its Government Tenders website.

Amendment moved by Mr B L Tee – That in paragraph 18 the following sub-paragraph be inserted: “The Committee further notes the release of commercial-in-confidence documents may mean organisations engaging in tender processes may be less willing to provide the Government with frank assessments.”

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr B L Tee
Mr E W Thornley

Noes 2
Mr E J O'Donohue
Ms S M Pennicuik

Amendment agreed to.

Amendment moved by Mr P R Hall – That in paragraph 18 the following sub-paragraph be inserted: “However, in this instance the Committee is disappointed the documents have not been made public.”

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Amendment agreed to.

Paragraph 19

The Committee notes there are publicly available documents which outline the commercial arrangements entered into by the Government. The Committee also notes the tenderer’s estimates of their internal returns and the Government’s returns are covered by the commercial-in-confidence agreement and are not publicly available. Given the public interest in the development of the Kew site, these documents should be made public as the documents suggest that the Victorian
community may not receive an appropriate financial return for the alienation of 27 hectares of prime public land near the city.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

Paragraph 20

The Committee also raises concern over Walker Corporation's evidence on the matter of political donations to the Australian Labor Party, the Liberal Party, and Australian Democrats, and in particular the statement by the Managing Director of Walker Corporation that political donations may provide developers with favourable access to Ministers and other Government decision makers.

Amendment moved by Mr E W Thornley – That after paragraph 20 the following sub-paragraph be inserted: "The Committee has no evidence that political donations impacted on the Government decision."

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 2
Mr B L Tee
Mr E W Thornley

Noes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Amendment negatived

Paragraph 21

Key issues arising from the evidence received from witnesses in paragraphs 15 and 17 include:

- accommodation of the KRS clients and possible conflict between the development, relocation of KRS clients and the State Disability Plan;
- the loss of public open space on the site and the protection of the existing vegetation and natural environment;
- the lack of local infrastructure supporting the new community;
- lack of public consultation;
- limited involvement of Boroondara City Council in the planning process;
- lack of a developer contribution scheme;
- the density of the planned private housing;
the lack of public disclosure over the finances of the contractual agreement between the government and developer and the State Government’s anticipated financial return to disability services;
- lack of transparency in Victorian Government dealings with Walker Corporation;
- involvement of Mirvac Group in the development;
- the role of political lobbyist, former Senator Graham Richardson; and
- possible influence of Walker Corporation political donations during the development approval process.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

Paragraph 22

The Committee will be conducting further public hearings with key witnesses in relation to the Kew Residential Services development in late December 2007 and early in 2008. Based on the evidence received to date, the Committee will further investigate a number of matters including:
- questions as to whether or not the State Government has conducted an open and public process to properly examine the advantages or disadvantages of developing the 27 hectares of public land at the Kew Residential Services site, and whether it developed an outcome that takes sufficient account of the needs of the long standing residents;
- questions as to whether the tender process was conducted according to best practice and in the public interest; and
- questions over the involvement of lobbyist, former Senator Graham Richardson, in two distinct parts of the tender process; the successful achievement of the tender by Walker Corporation and then subsequently his intervention in the implementation of the tender arrangements by the State Government. Mr Richardson has been invited to give evidence at a future public hearing.

Amendment moved by Mr B L Tee – That in paragraph 22 the words “questions as to whether” in the second point be omitted with the view of inserting in its place the following: “the process of examining the merits and disadvantages of”

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 2
Mr B L Tee
Mr E W Thornley

Noes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Amendment negatived.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

Paragraph 27

A review commissioned by the Government conducted over a period of two years did not recommend the retention of the 40 hectare site. However, evidence received to date from the above witnesses highlight the following:

• concerns over the consultation process;
• the Devilbend Reserve will play a critical part in protecting biodiversity on the Mornington Peninsula and the incorporation of the 40 hectare lot would enhance this important role;
• the 40 hectare lot forms an integral part of the water catchment of the Devilbend Reservoir and should have been incorporated into the Devilbend Park and thereby have been protected from future sale or other incursion.
• any decision to dispose of this land should be deferred for a period of 5-10 years until such time as visitation to the Devilbend Reserve can be assessed.

Amendment moved by Mr B L Tee – That in paragraph 27, in the first point, the word “would” be omitted with the view of inserting in its place the word “could”.

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 2
Mr B L Tee
Mr E W Thornley

Noes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Amendment negatived.

Amendment moved by Mr B L Tee – That in paragraph 27 the word “integral” be omitted.

Question – that the amendment be agreed to – put.
The Committee divided

**Ayes 3**
- Mr P D Kavanagh
- Mr B L Tee
- Mr E W Thornley

**Noes 3**
- Mr P R Hall
- Mr E J O'Donohue
- Ms S M Pennicuik

There being an equality of votes, the Chairman gave his casting vote with the noes.

Amendment negatived.

Question – that the paragraph stand part of the report – put.

The Committee divided

**Ayes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 2**
- Mr B L Tee
- Mr E W Thornley

Question agreed to.

* * * * *

**Paragraph 30**

In view of the concerns raised in evidence to date and subsequent correspondence by local resident groups, the Committee is concerned to note the State Government is proceeding in attempting to sell the 40 hectares of public land north of Graydens Road through an as yet uncompleted expression of interest process. This action has been taken despite concerns raised by the local community and without regard to the Committee’s on-going investigations and tabling of a final report in June 2008.

**Amendment moved by Mr P D Kavanagh** – That in paragraph 30 the following sub-paragraph be inserted: “The Committee is further concerned by reports received at the end of November that the Government is proceeding and finalising the sale”.

Question – that the amendment be agreed to – put.

The Committee divided

**Ayes 3**
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 3**
- Mr P R Hall
- Mr B L Tee
- Mr E W Thornley

There being an equality of votes, the Chairman gave his casting vote with the ayes.

Amendment agreed to.

Question – that the paragraph, as amended, stand part of the report – put.

The Committee divided
Ayes 4  
Mr P R Hall  
Mr P D Kavanagh  
Mr E J O'Donohue  
Ms S M Pennicuik  

Noes 2  
Mr B L Tee  
Mr E W Thornley

Question agreed to.

**Paragraph 31**

At a hearing on 19 November 2007 with the Department of Sustainability and Environment, the Committee sought information on any assessments the Department may have made in respect to the Devilbend Reserve site, including the 40 hectares to the north of Graydens Road. The Secretary of the Department declined to provide advice on this matter as he believed the issue was outside the Government’s interpretation of the terms of reference.

**Amendment moved by Mr B L Tee** – That in paragraph 31 the following sub-paragraph be inserted: “However, the Secretary advised that should the Committee’s terms of reference be clarified by the Legislative Council, the information would be made available.”

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 4  
Mr P R Hall  
Mr P D Kavanagh  
Mr B L Tee  
Mr E W Thornley  

Noes 2  
Mr E J O'Donohue  
Ms S M Pennicuik

Amendment agreed to.

Question – that the paragraph, as amended, stand part of the report – put.

The Committee divided

Ayes 4  
Mr P R Hall  
Mr P D Kavanagh  
Mr B L Tee  
Mr E W Thornley  

Noes 2  
Mr E J O'Donohue  
Ms S M Pennicuik

Question agreed to.

**Paragraph 32**

The Committee raises concern over the reluctance of Department of Sustainability and Environment to provide any relevant assessments and will be pursuing this matter with the Department in further hearings.

**Amendment moved by Mr B L Tee** – That in paragraph 32 the following sub-paragraph be inserted: “The Secretary advised the Committee that if the
Committee’s terms of reference were clarified by the Legislative Council the relevant assessments requested would be made available.”.

Question – that the amendment be agreed to – put.

The Committee divided

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Amendment negatived.

Question – that the paragraph stand part of the report – put.

The Committee divided

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Question agreed to.

* * * * *

Paragraph 34

Key issues raised in the hearings include:
- the use of the carpark (public land) adjacent to the proposed development;
- the scale of the proposed Port Campbell headland development;
- significant concerns over the geological instability and public safety of the Port Campbell headland including claims the proposed development could substantially accelerate a collapse of the headland;
- visual impacts the proposed development will have upon the Port Campbell Public Park Memorial Reserve and War Memorial;
- treatment of cultural heritage issues and environmental impacts in relation to the proposed Port Campbell headland development;
- community consultation on the Port Campbell headland project; and
- possible impacts on future access for commercial fishing vehicles.

Amendment moved by Mr B L Tee – That in paragraph 34 the following additional point be inserted: “Under the development proposal the only public land relevant to the Committee’s terms of reference were four car parking spaces and these spaces are managed by the local council.”

Question – that the amendment be agreed to – put.

The Committee divided

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Paragraph 42

While, the Committee notes the public consultation has yet to be completed, issues of concern raised in the submissions and evidence with respect to the proposed development include:

- the proposed alienation of the public foreshore in Apollo Bay for the use of private developers and local government administrative facilities;
- public access to the redeveloped Apollo Bay Harbour Precinct;
- the transparency of the planning process regarding the redevelopment;
- the development plans appear to be at odds with the Victorian Coastal Strategy;
- the lack of community support for the Apollo Bay Harbour Precinct redevelopment; and
- safety and management of Apollo Bay Harbour.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

Paragraph 45

The Committee wishes to bring to the House’s attention direct intervention by the Attorney-General on behalf of the Government that has had a negative impact upon the evidence provided to the Committee by Victorian Government departments/witnesses.

Amendment moved by Mr E W Thornley – That in paragraph 45 the words “direct intervention” be omitted with the view of inserting in its place the following: “correspondence from”.

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 2
Noes 4
Amendment negatived.

Question – that the paragraph stand part of the report – put.

The Committee divided

**Ayes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 2**
- Mr B L Tee
- Mr E W Thornley

Question agreed to.

**Paragraph 46**

The Committee received a letter from the Attorney-General on 26 September 2007 advising that the Government believes the Committee’s terms of reference are limited to a definition of public land as set out in Administrative Arrangements Order No. 58, as opposed to a broader common understanding of public land. A copy of this letter is provided in Appendix 8.

**Amendment moved by Mr B L Tee** – That in paragraph 46 the following be inserted before the last sentence: "Administrative Arrangements Order No. 58 has been used as the basis for the definition of public land by all Governments since 1988".

Question – that the amendment be agreed to – put.

The Committee divided

**Ayes 2**
- Mr B L Tee
- Mr E W Thornley

**Noes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

Amendment negatived.

**Paragraph 47**

The Attorney-General’s letters suggests that the 1988 Administrative Order No.58 distinguishes between public land (land with a public importance that means it cannot be sold) administered by one Minister and Government land, which can be sold (administered by another Minister).

**Amendment moved by Mr P D Kavanagh** – That in paragraph 47 after the words “Attorney-General’s letter” the following be inserted: “to the Committee and potential witnesses”.

67
Paragraphs 49 & 50

49. At its meeting on 9 October 2007, the Committee resolved to write to the Attorney General advising that it did not accept the Government’s narrow interpretation of ‘public land’, and requested that the Government reconsider its position on the matter. The Committee advised the Attorney-General:

*During the lengthy debate in establishing the Committee, Members of the Legislative Council made numerous references to public land in broad terms and highlighted a number of public land sites that could form part of the select committee’s investigations. It is clear from this debate that Members did not attempt to limit the Committee’s Terms of Reference to any narrow interpretation of ‘public land’.*

*The Committee’s interpretation of the scope of its Reference and the meaning of ‘public land’ is derived from this establishing debate and resolution. Accordingly, the Committee has proceeded to call for submissions and take evidence on the broader and generally accepted interpretation of ‘public land’.*

A list of public land sites referred to by Members in the 2 May 2007 establishing debate is provided in Appendix 9.

50. On 29 October 2007, the Attorney-General reconfirmed the Government’s limited interpretation of the Committee’s terms of reference and advised that the Government remains willing to co-operate with any actions taken to clarify the Committee’s terms of reference. A copy of this letter is provided in Appendix 10.

Question – that the paragraphs stand part of the report – put.

The Committee divided

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Question agreed to.

* * *
Paragraph 53

In accordance with the Clerk’s advice, the established parliamentary practice referred to above, and the Attorney-General’s request that the Committee clarify its interpretation of the reference, the Committee resolved on 8 November 2007 to adopt the following definition of public land:

That with respect to the terms of reference for the Select Committee on Public Land Development, established by way of Council resolution on 2 May 2007, the Committee notes that reference to ‘public land’ refers broadly to the generally accepted dictionary definition of public land and is not limited by any legislative or administrative arrangements order, or by any special meaning in government or industry practice.

For the purposes of the select committee investigations, the Committee notes that it is commonly accepted that public land includes, but is not limited to:

- Crown land;
- Land vested in or owned by a Minister, government department, statutory corporation, public authority or municipal council;
- Land otherwise used for a public purpose.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

* * * * *

Paragraph 56

The Committee notes in recent public hearings, various non-government witnesses including the Municipal Association of Victoria, Interface Councils, and Save Our Suburbs group, all stated public land needed to be defined broadly in line with community understanding and expectations.

Amendment moved by Ms S M Pennicuik – That paragraph 56 be omitted with the view of inserting in its place the following: “The Committee notes in recent public hearings, various non-government witnesses including the Municipal Association of Victoria, Interface Councils, and Save Our Suburbs group, all stated their understanding of the term public land is that which is commonly understood in the community, that is, not private land; and is therefore the definition that their submissions and evidence are based on. All agree that public land needed to be defined broadly in line with community understanding and expectations.”

Question – that the amendment be agreed to – put.
The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Amendment agreed to

Amendment moved by Mr B L Tee – That in paragraph 56 the following sub-paragraph be inserted: 'Notwithstanding these suggestions the Committee has refused to have its terms of reference broadened or clarified by the Legislative Council.'

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 2
Mr B L Tee
Mr E W Thornley

Noes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Amendment negatived.

Question – that the paragraph, as amended, stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

*  *  *  *

Paragraph 60

The Committee notes that the letters from both Ministers and relevant policy documents did not refer to any narrow definition of public land contained in Administrative Arrangements Order No. 58. The first time the Committee was made aware the Government had an issue with the terms of reference was in the Attorney-General’s letter of 26 September 2007.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall

Noes 2
Mr B L Tee
Paragraphs 62 to 64

62. Consistent with the Attorney-General’s limited interpretation of the terms of reference referred to in paragraphs 46-48 above, no Government Department has provided the information requested to date. The Committee is in the process of following this matter up with all Government departments.

63. Three Victorian Government Departments subsequently gave evidence in public hearings (see below), but could not guarantee that any public land data would be made available to the Committee.

64. The Committee notes with concern that some departmental evidence cast doubt on the existence of a definitive list of such data held by departments individually or centrally. This is incongruous given the existence of a 2007/08 Budget output measure with targets for the sale of public land.

Question – that the paragraphs stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Paragraph 66

The Executive Director of Major Projects Victoria wrote to the Committee on 20 September advising that MPV staff would not be providing evidence on the specified hearing date as it was two days prior to the close of written submissions and completion of the Victorian Government submission. The Committee notes that MPV agreed to conduct the guided site visit on 26 September, and is grateful for the cooperation and support of the relevant MPV officers on the day.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue

Noes 2
Mr B L Tee
Mr E W Thornley
Paragraph 68

The Committee acknowledged that Parks Victoria does not have ‘ownership’ nor a management relationship for a 40 hectare land parcel excised from Devilbend Reserve. Nevertheless, the Committee was interested in discussing the conservation values of the park, the rezoning of the land, key challenges regarding the future management of the park and the function and work to date of the Advisory Group for Devilbend Reserve.

Question – that the paragraph stand part of the report – put.

The Committee divided

**Ayes 4**
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

**Noes 2**
Mr B L Tee
Mr E W Thornley

Question agreed to.

* * * *

Paragraph 70

The Committee is disappointed that Major Projects Victoria and Parks Victoria declined to appear at these hearings along with other witnesses and has re-invited both Major Projects Victoria and Parks Victoria to give evidence on 13 December 2007.

Question – that the paragraph stand part of the report – put.

The Committee divided

**Ayes 4**
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

**Noes 2**
Mr B L Tee
Mr E W Thornley

Question agreed to.

* * * *

Paragraph 78

Further, the Committee believes Mr Harris’ decision to not allow departmental staff to give evidence represents inappropriate interference with witnesses. In particular, the Committee notes Legislative Council Standing Order 18.11 which states: ‘If it appears that any person has been directly or indirectly endeavouring to deter or
hinder any person from appearing or giving evidence, such person may be declared guilty of contempt’. 

Amendment moved by Mr B L Tee – That in paragraph 78 the following sub-paragraph be inserted: “The Committee notes the final decision on who is best able to represent the Minister rests with the Minister.”

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 2
Mr B L Tee
Mr E W Thornley

Noes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Amendment negatived.

Question – that the paragraph stand part of the report – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Noes 2
Mr B L Tee
Mr E W Thornley

Question agreed to.

*   *   *   *

Paragraph 82

Further to section 4.6 above, the Committee reports to the House its concern over the evidence provided at this hearing by Mr Peter Harris, Secretary, Department of Sustainability and Environment. In particular, the Committee highlights Mr Harris was unco-operative in refusing to answer a number questions on the basis that he believed such questions were outside the scope of the Committee’s Terms of reference. Unfortunately, as a consequence of the Attorney-General's intervention, evidence provided by Government witnesses to date has not been completely frank and cooperative.

Amendment moved by Mr P D Kavanagh – That in paragraph 82 the last sentence be omitted.

Question – that the amendment be agreed to – put.

The Committee divided

Ayes 4
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue

Noes 2
Mr B L Tee
Mr E W Thornley
Amendment agreed to.

**Amendment moved by Mr B L Tee** – That in paragraph 82 the following sub-paragraph be inserted: “Mr Harris repeatedly gave evidence that questions would be answered if the Committee clarified its terms of reference with the Legislative Council.”

Question – that the amendment be agreed to – put.

The Committee divided

**Ayes 3**
- Mr B L Tee
- Mr E W Thornley
- Mr P R Hall

**Noes 3**
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

There being an equality of votes, the Chairman gave his casting vote with the noes.

Amendment negatived.

Question – that the paragraph, as amended, stand part of the report – put.

The Committee divided

**Ayes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 2**
- Mr B L Tee
- Mr E W Thornley

Question agreed to

* * * * *

**Paragraph 86**

As part of his evidence, Mr Blacher commented on the role of the Department of Sustainability and Environment in assessing whether surplus land can be classified as public land not for sale or as government land which may be considered for future sale. The Committee intends to further investigate this process with Government departments in order to better understand the Government’s narrow interpretation of public land as it applies to all submissions and evidence received during the Inquiry.

Question – that the paragraph stand part of the report – put.

The Committee divided

**Ayes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 2**
- Mr B L Tee
- Mr E W Thornley
Question agreed to.

**Paragraph 87**

The Committee reports to the Legislative Council that the intervention by the Attorney-General to restrict the Committee’s investigations has significantly limited the input of Victorian Government departments to the Inquiry. As a result of the Attorney-General’s intervention including advice to Government departments, a number of government officers appearing as witnesses have been placed in a position of declining to answer questions and consequently providing limited evidence. Further, departments have declined to provide basic factual information on the sale, transfer or redevelopment of public land.

**Amendment moved by Mr B L Tee** – That in paragraph 86 the following sub-paragraph be inserted: “The Committee notes that when asked witnesses asserted they would provide the information to the Committee if the Legislative Council clarified the Committee’s terms of reference to bring matters within the terms of reference.”

Question – that the amendment be agreed to – put.

The Committee divided

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Question agreed to.

**Paragraphs 88 to 90**

88. The Committee believes such obstructions shows discourtesy not only to the Select Committee and the Legislative Council, but to the 165 individuals and organisations that have, in good faith, put forward their concerns relating to the sale or alienation of a public land. To date, the Government has not provided the proper level of assistance to the Committee that would be expected by the Victorian community.

89. The Committee rejects the narrow definition of ‘public land’ as outlined by the Attorney General and notes the Government’s definition of ‘public land’ is at variance with the common public understanding of the term and is at variance with the understanding of Members of the Legislative Council during debate on establishing the Select Committee on 2 May 2007 (see Appendix 7). The Committee maintains that narrow definitions of land types by governments through administrative arrangements orders should have no special standing or necessary relevance for the Committee’s terms of reference and broader public input to an Inquiry.

90. The Committee asserts its right to interpret its terms of reference within the establishment resolution as it sees fit. This right is supported by established parliamentary practice and advice from the Clerk of the Legislative Council. The Committee’s adoption of a definition of public land is within its terms of reference and will provide assistance to all witnesses.
Question – that the paragraphs stand part of the report – put.

The Committee divided

**Ayes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 2**
- Mr B L Tee
- Mr E W Thornley

Question agreed to.

**Paragraph 91**

The Committee believes the extraordinary attempt by the Attorney-General, on behalf of the Government, to define a Legislative Council select committee terms of reference represents a direct interference in the operations of the Committee and the role of the Legislative Council. It is the Committee’s view that the Attorney-General’s intervention is simply a device to obstruct the Committee’s activities, frustrate its progress and to defy the will of the Parliament.

**Amendment moved by Ms S M Pennicuik** – That paragraph 90 be omitted with the view of inserting in its place the following: "The Committee believes the unprecedented intervention by the Attorney-General, on behalf of the Government, to seek to impose a government interpretation of the terms of reference on a Legislative Council select committee is highly inappropriate and represents a direct interference in the operations of the Committee and the role of the Legislative Council to inquire into matters of public importance. This intervention by the Attorney-General is obstructing and frustrating the work and progress of the Committee into the important matters brought to it by individuals and groups in the community."

Question – that the amendment be agreed to – put.

The Committee divided

**Ayes 1**
- Ms S M Pennicuik

**Noes 5**
- Mr B L Tee
- Mr E W Thornley
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue

Amendment negatived.

Question – that the paragraph stand part of the report – put.

The Committee divided

**Ayes 4**
- Mr P R Hall
- Mr P D Kavanagh
- Mr E J O'Donohue
- Ms S M Pennicuik

**Noes 2**
- Mr B L Tee
- Mr E W Thornley
Question agreed to.

*   *   *   *

Adoption of Report

The Chairman put the question – That the Draft First Interim Report, together with Appendices, be adopted as the First Interim Report of the Committee.

The Committee divided

**Ayes 4**
Mr P R Hall
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

**Noes 2**
Mr B L Tee
Mr E W Thornley

Question agreed to.
MINORITY REPORT

The Way Forward

The Select Committee on Public Land Development has now been meeting for seven months and has consumed large amounts of tax payer funds.

It has yet to undertake discussion of, let alone draft, actual recommendations for any systematic changes to policy around the sale or disposal of public lands.

The Committee has received a wide range of submissions from many citizens and organisations that make constructive policy-level suggestions and raise particular concerns about individual sites or transactions. The Committee has chosen to ignore broader policy issues and focus entirely on a small proportion of individual sites for the sake of political expediency.

While the suggestions for possible policy change have been ignored to date, the focus on a small number of individual sites has created much false hope among those who have made submissions on the basis that the Committee has powers to intervene in these disputes when in reality it has none.

One example is the Committee’s dealing with the creation of a new 1000 hectare state park at Devilbend for a natural features reserve. The Committee has suggested that the sale of 40 hectares of land divided from the proposed park by a road not proceed even though an independent report, which included the views of experts and the community, found that the 40 hectares had limited environmental benefit. The proceeds of the sale of the 40 hectares will go to the development of the park and any delay in the sale will deprive the park of an important funding source.

Many of the concerns raised in some of these submissions related more to planning disputes about private developments than they do to the sale or alienation of public land. It is always important that citizens have avenues to address their concerns or disputes on planning matters, but those forums lie elsewhere and are not part of this Committee's terms of reference regardless of the view of the definition of 'public land'.

One example is the Committee’s dealing with the creation of a new 1000 hectare state park at Devils Bend. The Committee has suggested that the sale of 40 hectares of land divided from the proposed park by a road not proceed even though an independent report, which included the views of experts and the community, found that the 40 hectares had limited environmental benefit. The proceeds of the sale of the 40 hectares will go to the development of the park and any delay in the sale will deprive the park of an important funding source.

The matter of the disagreement over the definition of ‘public land’ has resulted in extended and wasteful processes that are yet to be resolved. The Government has made it clear that if the Committee were to seek the House's support in changing the wording of the terms of reference, any of those concerns could be avoided. The Committee has had ample opportunities to do so. The Committee has chosen not to resolve the dispute in this way but to escalate it with no apparent benefits from doing so.
When the Committee had the opportunity to investigate some of the more serious policy-level issues, such as comparing the policies under this Government with that of the Kennett Government in relation to the sale of schools, or to consider the implications for Victorians in relation to the Liberal Party’s plan to use public land in Victoria for possible nuclear power stations, it has actively refused to consider such matters.

With the House having now created the larger Finance and Public Administration Standing Committee to investigate all aspects of public administration in this State, we recommend that any matters of genuine policy importance yet to be considered by the Select Committee be referred to this new Committee and that further public resources not be wasted by the continued operation of this Committee.

Brian Tee, MLC, Deputy Chair
Evan Thornley, MLC