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PUBLIC LAND DEVELOPMENT

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CHAIRMAN’S FOREWORD

I am pleased to provide this final report of the Select Committee on Public Land Development. The work of this Committee responds to widespread and genuine concerns of the Victorian community about public land assets and open space.

Victoria, and particularly Melbourne, is experiencing a period of significant population growth which will see the management and planning of public land assets play a critical role in the future of the State. Greater population implies greater pressure on public assets and a greater need for planning and proper stewardship.

This has been a very substantial Inquiry with enormous public interest. Approximately 310 separate submissions, evidence and documents were received, including 136 written submissions relating to over 70 different sites, 142 witnesses in 23 days of public hearings at Parliament House and around the state and other significant correspondence.

The Committee respects greatly the work put into these submissions by members of Victorian community and notes that it has not been able to consider every location and every issue through hearings. We have however examined closely everything put before us and tried to understand what policy steps could be implemented to deal with the issues raised over the long term.

The Melbourne 2030 planning scheme seeks to expand the size of Melbourne by more than a million people and is currently at least ten years ahead on this measure. The Committee’s evidence shows that this planning scheme, introduced in 2002, has not been successful in putting in place the infrastructure and support to achieve anything like this objective. In fact, the Committee’s evidence on the issue of public land and open space shows that this growth is being foisted on communities without their consent or understanding and without adequate provision of public open space.

A fair question is; where will the children play in the future?

There is currently no plan to ensure that, as part of this massive development, there is an audit of public land and open space and planning systems are instituted that guarantee that key pieces of public land are protected into the future.

The liveability of Melbourne as a city and of regional Victoria must be protected for future generations. This liveability is not only a quality of life issue, but it is also an issue that is integral to the State’s economic future. In modern economies, key industries and people are attracted and retained when the quality of life is high. The Committee has recommended mechanisms to protect these long term interests.

The Committee also heard evidence on the development of public land that has caused us great concern. In particular, it is clear that the Government decisions made on the development of the Kew Residential Services site and the St Kilda Triangle site have not been in the community interest.

The Committee has recommended that several matters be referred to the Ombudsman. This in part is due to the Government’s refusal to co-operate with the inquiry and to block access to key information.
It is equally clear to us that the process involved in each of these developments, one part completed (Kew, stage one of many stages) and the other past tender but yet to be commenced (St Kilda), has been flawed in different ways.

The Kew Residential Services site development has seen decision making power stripped away from the community and its elected representatives, the City of Boroondara. This prize 27 hectare site just kilometres from the city is being developed on a model that concerns the Committee greatly. The transparency expected by the community on these massive developments also has been lacking. Key financial details, including the probity Audit are not available either to the Committee or the community. They should have been made available.

The involvement of former Senator Richardson in the Kew project has left many questions as has the model the government has chosen to use where it is the responsible planning authority, developer, and financial beneficiary

The Committee has recommended that an independent anti corruption commission be established. This recommendation moves directly from our concerns about public land development in Victoria and the evidence put before us.  

Finally, it is disappointing the Government led by the Deputy Premier and Attorney General has continued to hold to their absurd definition of public land based on an obscure administrative order from 1988. The Committee believes that this approach is obstruction pure and simple and is an attempt by the executive to frustrate the will of the Parliament. It is wrong that the Government should seek to define or limit the ability of the Legislative Council to scrutinise its activities.

I want on behalf of the Committee and the Victorian community to express my sincere thanks to the staff of the Public Land Select Committee, Secretary, Mr Richard Willis, Research Officers Sarah Kerwick and Dr Caroline Williams and Research Assistant, Mr Anthony Walsh for their tireless efforts in what has been a substantial and daunting task. This Inquiry will, I hope, be one that impacts to the benefit of all Victorians far into the future.

David Davis, MLC  
Chairman
LIST OF FINDINGS / RECOMMENDATIONS AND OVERVIEW

OVERVIEW

The Select Committee on Public Land Development was established in May 2007 with a terms of reference to inquire into –

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

Evidence put to the Committee over the course of this Inquiry has justified the investigation into public land. It has identified numerous examples of public land being sold or alienated for development despite significant community opposition. Evidence has also demonstrated that while the Green Wedges and Melbourne 2030 policy initiatives relating to public land and open space are generally sound, their implementation has fallen short of community expectations and the Government’s stated aims.

A set of common themes emerged early in the Inquiry. These include:

- that public land and open space are valued by communities, who are keenly and actively interested in its preservation;
- there is a high level of community concern regarding inappropriate use and development of public land, including the alienation of public land for private commercial gain, and the loss of significant public assets for short term commercial gain;
- that the disposal of public land and open space has been biased towards short-term commercial gain to the detriment of existing and/or potential community uses and environmental, cultural, heritage values;
- there exists a lack of transparency and accountability in public land dealings, with Government assessments of public land values having little or no public input;
- there is a lack of meaningful opportunities for local community and local government input into public land disposal and development processes;
• the absence of sound mechanisms for the preservation of public open space, particularly in local, urban contexts where population densities are increasing; and

• there is a need for a long term, strategic and coordinated approach to the management and disposal of public land by the State Government.

CHAPTER 1

FINDING 1.1

The Government’s refusal to accept the advice of the Legislative Council Clerk and subsequent Committee clarification of its terms of reference, together with the insistence by the Government for the Committee to go back to the Legislative Council to seek an amendment to its reference, represents a serious breach of the separation of powers between Parliament and the Executive. There is a dangerous precedent whereby a Government, formed in the Lower House, seeks to amend the terms of reference for a committee created by the Upper House.

FINDING 1.2

The Government’s interference and attempts to limit the Committee’s investigations are in direct conflict with the Government’s major reform of the Upper House, which took effect in November 2006, with the purpose of enabling the Legislative Council to operate effectively as a genuine House of Review.

FINDING 1.3

The Committee expresses its concern at the actions of the Attorney-General in blocking the release of critical documents relevant to the Committee’s terms of reference and believes that this behaviour does not meet the standard that would be expected of the First Law Officer in the State.

RECOMMENDATION 1.1

That the Legislative Council consider ordering for the production of outstanding documents from various Government departments relating to public land (including Crown land) data and information as outlined in Appendix 9.

CHAPTER 2

RECOMMENDATION 2.1

That the Government review existing legislative frameworks that govern the management, use and disposal of crown land.
FINDING 2.1

The current process for the identification and determination of land as surplus requires review and reform. There is a lack of uniform, consistent and transparent processes, and a lack of consultation with local government and community.

RECOMMENDATION 2.2

That a set of formal guidelines be developed for identifying Crown land as surplus. These should include provision for adequate assessment of any existing or potential community uses and values attached to land by ensuring:

- a formal opportunity for input by local councils and communities, where reasonably possible, prior to the State Government determining land as surplus;
- a full assessment of the strategic, long term value of the land against state-wide policies, priorities, criteria and local needs; and
- an open and transparent process where reasonably possible.

FINDING 2.2

The Committee finds the assessment of public land values is an important step in the process of considering future use and development of land parcels. Evidence received by the Committee suggests the current assessment criteria and processes are not widely known by the public and do not always involve the community.

FINDING 2.3

The current approach to Crown land classification is ad hoc, lacks transparency and needs to be reviewed and reformed. A new process should be inclusive of and open to the community, local councils and any other relevant interested parties. Open space requirements should become explicit criteria in these new guidelines.

RECOMMENDATION 2.3

That any land deemed by a Government department or agency as surplus to its requirements be subject to a comprehensive assessment, incorporating a formal mechanism for local government, stakeholder and community input, and be based on public value criteria including conservation, historical, recreation, tourism and cultural significance.

FINDING 2.4

Public land and open space is becoming more important to the community as population and housing densities increase. Artificial government targets for the sale of public land risk placing short term financial considerations ahead of long term planning and management of public land for community benefit.
FINDING 2.5

The Department of Treasury and Finance budget target for the sale of surplus Crown land may act as an artificial driver to the sale of public land. The target implies a possible conflict of interest between achieving the best outcomes for the community and achieving departmental sales targets.

RECOMMENDATION 2.4

That the Government investigate and develop a strategic approach to valuing public land which incorporates social, environmental and other values.

RECOMMENDATION: 2.5

That the Government regards budget estimates for the proceeds of Crown land sales as predictions rather than targets to be met.

RECOMMENDATION 2.6

That the Government revise and update the responsibilities of the Government Land Monitor to include the establishment and maintenance of a comprehensive, publicly accessible database of all Crown land sales and transfers between Government departments/agencies and other public bodies including local Government by both public and private processes, subject to privacy constraints.

The database should include specific details on transaction amounts and parties involved, subject to privacy constraints and should form the basis of a publicly available report and be included with the Department of Treasury and Finance’s consolidated annual report.

RECOMMENDATION 2.7

That a Register of Surplus Public Land be established to facilitate greater coordination, accountability and transparency in public land management and to provide for a more strategic use of surplus land.

RECOMMENDATION 2.8

That a system for the reciprocal transfer of land declared surplus between different levels of government be investigated. This could include longer term lease arrangements or direct transfer.

RECOMMENDATION 2.9

That the practice of the State Government selling land to local government at the full market value be reviewed.

RECOMMENDATION 2.10

That where land is transferred from a State department or agency to local government, past contributions in maintenance and upgrade should be considered by the State Government in determining the amount local government is required to pay.
RECOMMENDATION 2.11

That any ongoing costs to a council of maintaining a site which has been sold or transferred to local government as a community asset should also be acknowledged and State Government financial assistance be considered, especially if the site is of regional or state significance.

RECOMMENDATION 2.12

That local councils be provided with early notice of the intention of a State Government department or agency to sell Crown land and be permitted a minimum of 60 days to consider, accept or reject a land sale offer. Extensions of time should be allowed where circumstances require.

FINDING 2.7

The management and disposal of public land suffers from an insufficient level of coordination across government departments and agencies and the three tiers of government resulting in lost opportunities and suboptimal outcomes for public land and open space sites.

RECOMMENDATION 2.13

That the Government develop mechanisms to facilitate a more strategic and coordinated approach to the management of public land including:

• a memorandum between the three tiers of government and other key public land managers;

• a long-term plan for public land and public open space;

• a central agency or department to coordinate public land and open space policy and management; and

• the establishment of an independent advisory board.

FINDING 2.8

That although there are strong mechanisms to ensure best commercial results for governments in land transactions, systems to ensure that public land values are protected are much weaker.

RECOMMENDATION 2.14

That the Government establish an independent commission against corruption in Victoria.

CHAPTER 3

RECOMMENDATION 3.1

That greater provision for open space be incorporated in state and local planning frameworks and guidelines, with measurable objectives.
RECOMMENDATION 3.2

That the Government support local councils in developing and achieving local and regional open space strategies. These strategies should consider the local characteristics and needs including population density and appropriate open space provision per capita.

RECOMMENDATION 3.3

That the Government work with councils and local communities to review open space provisions in and adjacent to declared activity districts and that further development in these centres take account of open space needs. In particular, formal policies should be mandated for zones where the Government proposes high density or high intensity development.

RECOMMENDATION 3.4

That the mechanisms governing developer contributions to open space and cash-in-lieu of open space be urgently examined with a view to ensuring their effectiveness, enforceability and transparency.

RECOMMENDATION 3.5

That the mechanisms be strengthened for ensuring developer contributions in cash are directed toward the purchase, maintenance or improvement of open space be strengthened.

FINDING 3.1

Community concerns expressed in evidence to the Committee indicate that the Victorian Planning Provisions and the Subdivision Act 1989 are not operating effectively to protect public open space.

RECOMMENDATION 3.6

That the Government examine funding mechanisms for the acquisition of strategic land and open space, and the retention of local pocket parks by local government.

RECOMMENDATION 3.7

That a comprehensive audit of public open space in the areas covered by Melbourne 2030 be undertaken.

RECOMMENDATION 3.8

That any sale and alienation of open space be minimised until an audit is undertaken.

RECOMMENDATION 3.9

That retention of public land in the public estate be adopted as the default position, unless it can be shown by a process that the land in question has insufficient public value according to updated criteria.
RECOMMENDATION 3.10

That the Government investigate mechanisms to ensure public open space in metropolitan and regional centres be afforded greater legislative protection similar to that afforded to other land of State significance.

CHAPTER 4

RECOMMENDATION 4.1

That the Minister for Planning publicly release all documents pertaining to the Melbourne 2030 smart growth committees, including minutes, agendas and submissions, so that their role and assumptions in the establishment of Melbourne 2030 can be fully assessed.

FINDING 4.1

That school grounds and facilities have a demonstrated potential to serve as community public open space and other assets at relatively low cost.

RECOMMENDATION 4.2

That the Government consider ways of better utilising school grounds and facilities out of school hours for the benefit of local communities.

FINDING 4.2

The Committee supports Green Wedges and many of the principles of Melbourne 2030 policy relating to public open space, however evidence to the Committee indicates the implementation of these policies has fallen short of community expectations and the Government’s stated aims.

FINDING 4.3

The Government’s aim of protecting public open space in Melbourne has not always been achieved. There are many examples of public land being sold and developed for purposes that do not provide community benefit with local open spaces being lost.

FINDING 4.4

The population estimates on which the Melbourne 2030 policy are based will likely be achieved by the year 2020.¹

RECOMMENDATION 4.3

That the Government take note of the Melbourne 2030 Audit Expert Group recommendations and the concerns raised by the large number of submitters to the Public Land Development Inquiry.

¹ C. Houston & R. Millar, ‘City of 8 million “unliveable”’, The Age, 5 September 2008, p.1
RECOMMENDATION 4.4

That the Government acknowledge that there is a strong perception in the community that Melbourne 2030 policy is not protecting public land and open space in the community’s interests.

RECOMMENDATION 4.5

That the Government allocate additional resources for the implementation of Melbourne 2030 policy initiatives and the preservation of Green Wedges to ensure greater protection of public land and open space in Melbourne.

CHAPTER 5

FINDING 5.1

The Committee’s ability to investigate the development of the Kew Residential Services site was significantly restricted by the less than full cooperation from the Government.

FINDING 5.2

The Government’s assertion that the Kew site could not be considered by the Committee under its terms of reference is in conflict with the clear intention of the Legislative Council in establishing the Select Committee. It is contrary to accepted parliamentary practices that a parliamentary committee may interpret its own terms of reference, and displays contempt for the valuable contributions made by local community groups and local councils on this important issue.

FINDING 5.3

The process whereby the State Government overrode the planning powers of the Boroondara City Council in relation to the KRS site has resulted in a lack of transparency and openness.

FINDING 5.4

There exists an apparent, if not real, conflict of interest in the State Government’s roles as the site owner, joint developer, planning authority, regulator and beneficiary of the development.

FINDING 5.5

On balance, the re-development of the KRS site has not been in the broader public interest.

FINDING 5.6

Evidence put to the Committee indicates a strong public suspicion that the nature and timing of political lobbying and donations may have had an improper influence in the awarding of the tender to develop the Kew Residential Services site. On the basis of evidence received, the Committee finds that:
1. Mr Graham Richardson lobbied on behalf of Mirvac on the development and played a pivotal role in Walker Corporation securing a change to the terms of the contract to develop the Kew Residential Services site; and

2. the community cannot be confident that donations made by Walker Corporation to the Australian Labor Party had no improper influence in the tender process.

RECOMMENDATION 5.1

That issues relating to donations from organisations or individuals engaged in a tender process with the State be referred to the Electoral Matters Joint Investigatory Committee of the Victorian Parliament as part of its Inquiry into Political Donations and Disclosure. In particular, the Electoral Matters Committee should consider whether political parties be precluded from accepting donations from those engaged in commercial use or development of public land or other public assets.

FINDING 5.7

In effect, the development of the KRS site has resulted in the privatisation of a public facility. While the proceeds from this development are to be used to fund and support disability services, the Committee believes such services should be funded from general revenue and should not be dependent on the sale of public assets.

FINDING 5.8

The community is not aware of the full financial arrangements with respect to the KRS development.

RECOMMENDATION 5.2

That the Victorian Government publish the full financial arrangements and probity report for the KRS development.

RECOMMENDATION 5.3

That the Victorian Ombudsman investigate the probity of the KRS development tender processes.

FINDING 5.9

Based on current development proposals, the further development of the KRS site will result in a missed opportunity to use the purpose built facilities for much needed disability and respite care.

RECOMMENDATION 5.4

That the Government review the current proposal for the KRS development to ensure the project incorporates protection of the heritage trees and buildings, protection of open space and provision of much needed disability services.
FINDING 5.10

There is significant concern around the process and outcomes of the proposed St Kilda Triangle development. The Committee finds that there is considerable basis for community concerns with respect to inappropriate use of valuable public land.

FINDING 5.11

Evidence put to the Committee strongly suggests that the proposal should be renegotiated by the Government, the Port Phillip Council and developer in consultation with the community with a view to:

- reducing the size and nature of the development and its impact on the local community and amenity; and
- complying with the Urban Design Framework.

FINDING 5.12

Evidence put to the Committee indicates that the development plan as submitted by Citta Property Group does not conform with the St Kilda Urban Design Framework, and as such the Port Phillip Council may have erred in approving the development.

FINDING 5.13

The St Kilda Triangle development process establishes a dangerous precedent for the development of public land in any suburb or regional town in Victoria in a number of ways because of the combination of:

- the social and heritage significance of the site;
- the unique process involving the passing of the St Kilda Triangle Act, which confers virtually all responsibility for the site from the State Government to the Port Phillip Council;
- the multiple, conflicting roles of the Council as proponent, planning authority and committee of management;
- the lack of transparency in the tender process;
- the removal of third party appeal rights; and
- the commercialisation of public land.

RECOMMENDATION 5.5

The Committee strongly encourages the Victorian Government to work more closely with the Port Phillip Council, Citta Property Group and the local community within the existing legislative and contractual arrangements, to reach an outcome to the St Kilda Triangle development proposal that best meets community expectations.
RECOMMENDATION 5.6

The Committee recommends that the State Government allocate sufficient public funds to restore and refurbish the heritage Palais Theatre, to decontaminate the site, and to ensure that any development on the St Kilda Triangle site is primarily for cultural, entertainment, recreation and public open space as promised to the community.

RECOMMENDATION 5.7

The Committee recommends that the Victorian Ombudsman investigate the probity of the St Kilda Triangle development processes that were followed by the State Government and the Port Phillip Council.

RECOMMENDATION 5.8

That the Government investigate:

- the history, membership structure, responsibilities and current arrangement of the Caulfield Racecourse Reserve Board of Trustees, particularly in relation to its duty to uphold not just horse racing, but all the purposes of the reserve in the original Grant;
- the purpose to which money raised by horse racing has been used; and
- ways in which the Government can ensure that the Board of Trustees operates in an open and transparent manner and in accordance with the terms of the Grant.

RECOMMENDATION 5.9

That the Master Plan for the Caulfield Racecourse Reserve redevelopment be the subject of wide public consultation incorporating the municipalities of Glen Eira, Stonnington, and Port Phillip.

RECOMMENDATION 5.10

That the Minister for Planning strongly consider appointing community members and/or people with park and recreation expertise as nominees of the State Government to the Caulfield Racecourse Reserve Board of Trustees to provide a balanced representation of interests and expertise.

RECOMMENDATION 5.11

That the day-to-day management of the Caulfield Racecourse Reserve, by delegation from the Trustees to the Melbourne Racing Club, be reconsidered.
FINDING 5.14

The Caulfield Racecourse Reserve profits to the Melbourne Racing Club have been disproportionately directed to racing users, with inadequate provision for use of public park and recreation users as required by the original Grant.

RECOMMENDATION 5.12

That the Melbourne Racing Club’s recent report relating to the Caulfield Racecourse Reserve fencing boundaries be publicly released.

RECOMMENDATION 5.13

That the Caulfield Racecourse Reserve Trustees direct a substantial amount from the profits made by the Melbourne Racing Club over many decades to the provision of public park and recreational facilities, including promotion of the public use of these facilities as recompense to the community.

RECOMMENDATION 5.14

That the Government support the joint communiqué between the Melbourne Racing Club and the Glen Eira City Council to the Caulfield Racecourse Reserve Trustees, bearing in mind that further public consultation is needed with respect to the future use of public open space within the centre of the Caulfield Racecourse Reserve.

FINDING 5.15

The proposed development of the Southern Ocean Beach House will have significant visual impacts and may have serious geological stability and public safety impacts on the surrounding area. Evidence suggests the proposal may not conform to the local planning scheme that aims to preserve the low rise and village character of the Port Campbell township. The size and scale of the proposed development will impede views from the town to the headland and vice versa.

FINDING 5.16

The lack of cultural, social and heritage assessment before the Department of Sustainability and Environment consent for use and development of Crown land (Public Park War Memorial Reserve) should be revised. Any extension to the consent to any future use and development of Crown land should take into account the significance of the headland and port to the State of Victoria.

FINDING 5.17

It was difficult to determine which Government department or agency has responsibility for the geotechnical stability and public liability issues relating to the Port Campbell headlands.

RECOMMENDATION 5.15

That the Government undertake a geotechnical assessment of the stability of the Port Campbell headland, given the history of collapses of nearby coastal, geological formations close to Port Campbell.
RECOMMENDATION 5.16

That the Government notify the relevant authorities that the development of the Southern Ocean Beach House not proceed until the geological assessments are complete.

RECOMMENDATION 5.17

That the Department of Sustainability and Environment be more proactive in assessing the potential impacts of developments adjacent to public land on that land and make recommendations to planning authorities.

FINDING 5.18

The Committee highlights its concern over the process whereby the Government proceeded to sell for private development the approximate 40 hectare parcel of land attached to the Devilbend Reserve, a site of significant environmental value. The Committee does not support the practice of selling public land in order to raise funds for the conservation and development of other public land.

FINDING 5.19

The Government’s view that the 40 hectares of land was of no ecological significance, and so was separated from the rest of the Devilbend Reserve site, was in conflict with expert evidence provided to the Committee that it is an integral part of the catchment area.

FINDING 5.20

The Committee finds that the sale of the 40 hectares appears to have been driven entirely by financial considerations and that the significant ecological and conservation values of the land have now been lost. This case study is another example of long term loss for short term gain.

FINDING 5.21

The Committee understands the Government declared that it will inform the community as to how it intends to spend the proceeds from the sale of the 40 hectare parcel of land at Devilbend Reserve.

FINDING 5.22

The Committee is concerned that although Deakin University has legitimate interests and plays an important educational role, the interests of local residents and the protection of public land has not been a key priority with respect to the University’s involvement in development around the Gardiners Creek Reserve.

FINDING 5.23

The Committee supports the Boroondara City Council's criticisms of the Government’s management of the proposed Camberwell Railway Station redevelopment project.
RECOMMENDATION 5.18

That the Government publicly disclose the full contract terms entered into with Tenterfield in relation to the Camberwell Railway Station redevelopment.

RECOMMENDATION 5.19

That the development of a Government register and audit of public land (referred to in Chapter 2) include a full audit of all VicTrack land holdings.

FINDING 5.24

The Committee believes it would be beneficial if deliberations of the inter-departmental committee established to review the Werribee Zoo proposal were released publicly.

FINDING 5.25

The Committee has reservations over the development proposed at the Lonsdale Lakes. Evidence to the Committee indicates the proposed development could have adverse impacts on public lands adjacent to the development, particularly the integrity of Swan Bay and may contravene Australian’s obligations under the Ramsar Convention on Migratory Birds.
CHAPTER 1:
Introduction and Background

1. This is the third and final report of the Select Committee on Public Land Development. Upon tabling this final report, the function and operation of the Committee will cease.

2. This chapter outlines the Committee’s Inquiry process, including public submissions and hearings; matters pertaining to the scope of the Terms of Reference and related Government obstructions; and provides a general overview of the protection of public land and open space in Victoria.

1.1 Committee Inquiry Process

1.1.1 Establishment of Select Committee

3. The Committee was established on 2 May 2007 with a terms of reference to inquire into —

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

1.1.2 Interim Reports

4. The Committee tabled interim reports on 6 December 2007 and on 11 June 2008. Following tabling of the second interim report, the Legislative Council agreed to extend the Committee’s final reporting date from 30 June 2008 until 11 September 2008.

5. The purpose of the first interim report was to provide the Parliament with a progress of investigations as at the end of 2007, to highlight concerns raised in evidence with respect to specific public land sites and to bring to the House’s attention restrictions placed on the Committee’s investigations by the Government.

6. The purpose of the second interim report was to provide the Parliament with a further progress of investigations and to outline a timetable for completion of
the Inquiry beyond the initial reporting date of 30 June 2008 (see paragraph 4 above).

7. Matters covered in the interim reports are included in this final report for the sake of completeness.

1.1.3 Public Submissions and Hearings

8. The Committee was overwhelmed by the extent of public interest in this Inquiry and desire to provide input through written submissions, public hearings, and follow-up information. As is evident throughout this report, the significant public input illustrates the value the community places on its public land and open spaces, and the importance of protecting these assets.

9. The Committee welcomed the significant public response to the Inquiry and interest by individuals and groups to give evidence. Approximately 310 separate submissions, evidence and documents were received comprising:

- 136 written submissions covering broad public land issues and highlighting concerns over approximately 70 different sites and developments throughout Victoria;
- 142 witnesses in 23 days of public hearings held at Parliament House, Kew, Devil Bend, Port Campbell, Apollo Bay, Caulfield, St Kilda, Coburg, and Geelong;
- 25 additional late submissions accepted as correspondence received; and
- 25 witnesses provided further documents at public hearings.

A number of individuals provided several submissions, gave evidence at public hearings and tabled multiple documents.

10. This report does not attempt to address or comment on every single submission; rather it focuses on common themes and concerns and highlights key case studies that emerged throughout the Inquiry.

Written Submissions

11. The Committee’s establishing resolution required it to advertise its terms of reference and call for written submissions. Advertisements were placed in major metropolitan and regional newspapers throughout Victoria from 8-11 June 2007 seeking submissions to the Inquiry. At the same time, the
Committee wrote to and invited submissions from a wide range of Government departments, agencies, private organisations and individuals.

12. The initial 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 received a total of 136 formal written submissions (see Appendix 1).

13. The public's desire to contribute to the Inquiry extended past the close of written submissions in October. The Committee received a number of further requests to make late submissions and/or provide additional supplementary material. In order to accommodate further public input, the Committee agreed to accept further material throughout the duration of the Inquiry and that such contributions would be received as correspondence and made public through the Committee's website.

14. The majority of submissions and additional correspondence provided details of specific sites that have been sold, alienated or developed, are in the process of being sold or alienated or have been proposed for sale or alienation. In excess of 70 different sites and developments were brought to the Committee's attention, many of which were examined further in public hearings.

15. A number of public land issues were the subject of multiple submissions and public hearings including sale and/or developments at the Kew Residential Services site; Port Campbell headlands; St. Kilda Triangle; and Devilbend Reserve, together with the alienation of public land within the Caulfield Racecourse Reserve. These sites and other specific cases are examined in Chapter 5.

Public Hearings

16. While most submissions focussed on specific public land sites the matters raised served to highlight broader policy issues for consideration by the Committee.

17. The Committee commenced public hearings in Kew on 26 September 2007 and continued to receive evidence for the following nine months with a final hearing being held on 30 June 2008. In total, the Committee held 23 days of
public hearings at Parliament House and other metropolitan and regional locations, receiving evidence from 142 separate witnesses. (See Appendix 2)

18. A number of hearings focussed on specific public land sites including:

- Kew Residential Services
- Devil Bend Reserve
- Port Campbell headlands
- Apollo Bay Harbour
- Caulfield Racecourse Reserve
- St. Kilda Triangle
- Merri and Edgars Creek parkland in Coburg
- Various land issues and proposed developments in Geelong and the Bellarine Peninsula, including Lonsdale Lakes, Barwon Heads, Portarlington pier and foreshore, and Queenscliff Harbour.

19. Further hearings were held at Parliament House and generally focussed on broad policy issues relevant to the Committee’s reference. The Committee attempted to take evidence from a wide range of Government departments and agencies, however the evidence provided by these Government agencies was limited.

20. As noted in earlier interim reports, Government witnesses asserted they would provide wider evidence to the Committee if the Legislative Council clarified the Committee’s terms of reference. The Committee notes that the Attorney-General had indicated the Government would be willing to cooperate with any action to clarify and/or amend the Committee’s terms of reference; however despite the Committee’s clarification, the Attorney-General did not accept this and Government witnesses still refused to cooperate. This matter is discussed further in sections 1.2.4 and 1.2.5 of this Chapter.

21. The following Government departments, agencies and Ministers attended public hearings:

- Department of Treasury and Finance
- Department of Sustainability and Environment
22. Throughout this final report, the role of local government is examined in detail. The Committee gratefully acknowledges the significant contribution from Victorian local councils in submissions and public hearings. The following councils gave evidence in public hearings on specific public land sites and/or broader policy issues:

- Boroondara City Council
- Mornington Shire Council
- Corangamite Shire
- Colac Otway Shire
- Frankston City Council
- City of Stonnington
- City of Greater Dandenong
- Glen Eira City Council
- City of Port Phillip
- Moreland City Council
- Borough of Queenscliffe
- City of Greater Geelong
Evidence was also received from the Municipal Association of Victoria and the Interface Councils group.

1.2 Scope of Committee's Terms of Reference

Throughout the course of the Inquiry, the subject of the scope of the Committee’s terms of reference has been contested by the Government and accordingly has significantly restricted the nature of evidence given by Government witnesses. This matter, or more specifically, the direct intervention by the Attorney-General to limit the Committee’s reference, was dealt with in detail in the Committee’s first interim report in December 2007. This intervention related to an interpretation of the scope and meaning of ‘public land’ and the Government’s attempt to limit the interpretation of this term to the technical definition as in the 1988 Administrative Arrangements Order, rather than the definition of public land commonly understood by the community and intended by the Parliament.

The Committee’s May 2008 second interim report further advised the House that Government intervention and obstructions had resulted in various Government witnesses continuing to refuse to provide evidence on a range of public land matters, and that a number of requests for public land data and information from the Government had not been forthcoming.

It is important that this final report re-iterate matters covered in previous interim reports dealing with the scope of the Committee’s reference and Government obstructions as the matter was an unfortunate but deliberate attempt by the Government to limit the ability of the Committee to gather evidence into an issue of significant public interest.

1.2.1 Establishing Resolution

The Committee's terms of reference were debated extensively in the Legislative Council on 2 May 2007 during the establishment of the Select Committee. Members from the Government, Opposition and minor parties all contributed to this wide ranging debate and spoke in broad terms on the proposed investigation into the sale and alienation of public land in Victoria. A list of various public land sites identified in this establishing resolution debate is provided in Appendix 3.
28. The lead speaker for the Government, Mr Matt Viney, moved an amendment to the establishing motion, to the extent that the terms of reference be issued to the Outer Suburban/Interface Services and Development Committee, a Government controlled Joint Investigatory committee. Further Government speakers supported Mr Viney’s amendment which was eventually defeated.

29. It should be noted that the Government amendment to the original establishing motion made no attempt to limit the scope of the reference or to specify the scope of ‘public land’. The basis for the proposed Government amendment was simply to refer the same terms of reference to a Government controlled Joint Investigatory Committee.

30. Importantly, no members of the Legislative Council, including three Ministers relevant to the Inquiry, made any reference to a specific or technical definition of public land, or to Administrative Arrangements Order No. 58 which was subsequently used by the Attorney-General to obstruct the Committee’s investigations.

31. The Committee has maintained throughout the course of the Inquiry that the broad scope of the terms of reference and possible public land sites to be investigated were clearly outlined by the Legislative Council during the establishing resolution debate on 2 May 2007. The contributions by Members during this debate and the final terms of reference agreed upon by the House clearly intended the Committee to examine the sale and alienation of public land and open space in the broadest publicly accepted definition.

1.2.2 Initial Contact with Departments

32. As reported in the first interim report, at the commencement of the Inquiry the Committee sought informal private background briefings with various State Government departments in order to assist members of the Committee to understand relevant Government policies, programs and practices.

33. The Minister for Finance and Minister for Planning, and their respective departments, were approached in early June 2007 seeking background briefings. Both Ministers subsequently declined the request and advised that rather than provide a background briefing at the start of the Inquiry, priority would be given to the development and preparation of a formal submission by
28 September 2007. Relevant background policy documents were provided to the Committee by both Ministers at that stage.

34. The Ministers or their departments did not take the opportunity at that early stage to refer to any narrow definition of public land contained in Administrative Arrangements Order No. 58.

35. Prior to the commencement of public hearings and the close of written submissions, the Committee received feedback from Major Projects Victoria and Parks Victoria that they were unable to give evidence at public hearings in late September 2007 due to the fact the whole-of-Government submission had yet to be completed. Again, at that stage neither Government agency raised with the Committee that they had a different interpretation of the meaning of public land.

1.2.3 Scope of Written Submissions

36. From early June 2007 until the end of September 2007, the Committee received a total of 136 written submissions covering a broad range of issues dealing with public land, open space, Melbourne 2030 and Green Wedges.

37. The general public, community groups and local councils all addressed the terms of reference within the broader, widely accepted definition of ‘public land’. As was the case in the initial Parliamentary debate referred to above, other than the Government’s submission, not one single written submission questioned the scope of the reference or the definition of public land and no mention was made of the Administrative Arrangements Order.

38. The Committee notes that the intervention by the Attorney-General advising of the Government’s limited interpretation of the reference was received just two days before close of submissions. At that stage the Committee had already received in excess of 100 written submissions covering a broad range of issues.

1.2.4 Attorney-General Intervention

39. The Committee received a letter from the Attorney-General on 26 September 2007 asserting that the Government believed the Committee’s terms of reference were 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 4.

40. The Attorney-General’s letter to the Committee suggested that the 1988 Administrative Arrangements 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). Further discussion of this Administrative Arrangements Order and the Government’s assessment criteria under the Order is provided in Chapter 2. In any case, the Committee’s reference is wider than simply the sale of public land, as it deals with the alienation or development of public land.

41. The Attorney-General invited the Committee to reconsider its terms of reference in light of his advice, and to 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 would 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. The Committee notes with concern that this advice also appeared to influence the evidence of several representatives of independent bodies, including the Victorian Coastal Council.

42. 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 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’.

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43. 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 remained 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 5.

44. The Committee subsequently wrote to the Clerk of the Legislative Council on 30 October 2007, 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’ were 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.

45. 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 6.
46. 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.

47. 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 7).

48. The Attorney-General responded to the Committee on 23 November confirming the Government maintained its interpretation of the Committee's terms of reference (see Appendix 8).

49. The Committee noted in its first interim report that various non-Government witnesses including the Municipal Association of Victoria, Interface Councils, and Save Our Suburbs group, all gave evidence that 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 were based on. All agreed that public land needed to be defined broadly in line with community understanding and expectations.

50. In the Committee's first interim report, it concluded as follows:

   • 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.

- The Committee believes such obstruction 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 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.

- 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. 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.

- 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.

- 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.

51. The Committee has received no evidence to invalidate its earlier conclusions and indeed believes that its assessment of the Government’s behaviour at the time of the first interim report has been accurate.
1.2.5 Developments since Committee’s First Interim Report

52. Following the Committee’s first interim report at the end of 2007, the Committee continued to take a wide range of evidence in public hearings in the first half of 2008. Witnesses ranging from local government, community groups, academics and individuals all provided input into the wider community understanding of public land. Unfortunately, a number of Government Departments and agencies continued to refuse to answer questions relating to various public land sites and refused to provide important documentation requested by the Committee.

53. In particular, the Committee highlights the refusal of the Government and key Ministers to provide evidence on the Kew Residential Services development, despite this issue being a major public land site to be investigated as identified by the Legislative Council when establishing the Committee’s terms of reference.

54. Consistent with its interim reports, the Committee notes that Government witnesses asserted they would provide the wider evidence to the Committee if the Legislative Council clarified the Committee’s terms of reference. However, as outlined below, the Committee had serious concerns over the dangerous precedent that would occur whereby the Executive could influence an Upper House committee to alter its terms of reference.

55. The Committee notes the advice from the Clerk of the Legislative Council in October 2007 (see paragraph 45) that generally accepted parliamentary practice is that a terms of reference delegated to a select committee of the House may be interpreted by the Committee as it sees fit. The Committee also notes the Clerk’s cautious advice that the House may seek to reaffirm, clarify or amend a terms of reference if it believed such was warranted. On this occasion, no member of the Legislative Council sought to clarify the Committee’s reference, and as such the House did not take any action with respect to the Committee’s reference.

56. The Committee maintains the important right of a select committee to interpret its terms of reference as it sees fit, taking into account the clear intent of the House upon establishing a terms of reference.
57. The basis of the Westminster parliamentary system is that the Executive is appointed by the Parliament to manage day-to-day affairs and that the Parliament retains supremacy over the Executive. A fundamental feature of responsible government lies in the capacity of Parliament to scrutinise the workings of government.

58. In Victoria, the Executive is composed of Members of both Houses. Individually these Members are responsible to their own Houses, however collectively the Executive is responsible to the Parliament as a whole. While the Committee notes that this Inquiry was established by resolution of one House rather than via an Act of Parliament, it has sought to carry out the will of one of the constituent bodies of the Parliament.

59. Given the Executive is responsible to the Parliament, the Committee considers that in obstructing the Committee’s inquiries the Executive has not acted in accordance with its traditional role where it is the agent and servant of the Parliament.

**FINDING 1.1**

The Government’s refusal to accept the advice of the Legislative Council Clerk and subsequent Committee clarification of its terms of reference, together with the insistence by the Government for the Committee to go back to the Legislative Council to seek an amendment to its reference, represents a serious breach of the separation of powers between Parliament and the Executive. There is a dangerous precedent whereby a Government, formed in the Lower House, seeks to amend the terms of reference for a committee created by the Upper House.

**FINDING 1.2**

The Government’s interference and attempts to limit the Committee’s investigations are in direct conflict with the Government’s major reform of the Upper House, which took effect in November 2006, with the purpose of enabling the Legislative Council to operate effectively as a genuine House of Review.

**FINDING 1.3**

The Committee expresses its concern at the actions of the Attorney-General in blocking the release of critical documents relevant to the Committee’s terms of reference and believes that this behaviour does not meet the standard that would be expected of the First Law Officer in the State.
RECOMMENDATION 1.1

That the Legislative Council consider ordering for the production of outstanding documents from various Government departments relating to public land (including Crown land) data and information as outlined in Appendix 9.

1.3 Purpose of Inquiry: Protection of Public Land and Open Space

60. Public land and the protection of public open space is an issue close to the Victorian community’s heart. During the establishment of this Select Committee Inquiry, Members of Parliament spoke of the increasing concern Victorians have with the preservation of existing public open space in Melbourne and regional cities. Particular concern was raised over the increasing threat to public open space from development and commercial interests.

61. The Committee notes that in reviewing historical and emergent planning rationales in Australia, commentators of the Urban Research Program at Griffith University, Prof Brendan Gleeson and Dr Eddo Coiacetto, note a shift in the role of public land agencies ‘from a social orientation to a more commercial one’. A lack of value attributed to the real and potential recreational, conservation or social values in favour of the commercial value of public land parcels emerged repeatedly throughout the Inquiry.

62. As noted above, the Committee received significant passionate input into its Inquiry from a wide range of groups and individuals. The volume of written submissions and interest in public hearings from concerned citizens, local resident action groups and local councils illustrates the important role of public land in Australian life and how its protection is greatly valued. The list of public input to the Inquiry attached shows a number of resident action groups specifically established to protect public land; these include Protectors of Public Land Victoria Inc, Unchain St. Kilda, Save Our Suburbs, Kew Cottages Coalition, Port Campbell Community Group, Devilbend Landcare Group, Queenscliffe Community Association and the Merri & Edgars Creek Parkland Group.

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63. Victoria has experienced record population growth in recent years. According to the Australian Bureau of Statistics (ABS), Victoria’s population increased by 82,430 in 2007, representing growth of 1.6 per cent, the largest for 35 years. Recent ABS predictions suggest Melbourne’s population would increase to up to 8 million by 2056. This rapid, unprecedented increase in the population of metropolitan Melbourne is set to radically change the environments in which we live, work and play.

64. The establishment of an urban growth boundary through the State Government’s Melbourne 2030 policy is encouraging increased urban residential density, placing public land and open space at a premium. As population densities increase and development is consolidated around metropolitan activity centres, private open spaces (such as backyards) are also diminished. The threat of loss of open space is real.

65. Therefore, the sale and development of public land with perceived recreation, conservation or other community benefit values for present and future generations of Victorians generates significant community concern. Evidence put to the Committee strongly indicates a need for greater transparency, accountability and community input into the processes of assessing and managing public land and open spaces.

1.3.1 Historical Context

66. In its written submission to the Committee, the National Trust of Australia outlined the historical importance of preserving public land in Victoria which dates back to Melbourne’s early planning in the 1830s and 1840s when La Trobe and Hoddle encouraged large parks around developing Melbourne. Confronted with a quickly expanding city, they understood the importance of systematic protection of such spaces to provide for the recreation and health of the people.

67. In the past 100 years, governments have recognised the importance of systematic protection of public spaces for recreation and infrastructure. In 1929, the Metropolitan Town Planning Commission’s Plan of General Development study provided a major examination of public open space in Victoria and identified serious deficiencies in the provision of urban parkland,
most notably in expanding urban areas. The Plan provided for the creation of parkland along existing watercourses in metropolitan areas, however its implementation was frustrated by the Depression and the Second World War.

The Future Growth of Melbourne Report of 1971 was significant in its recommendation of what would become known as Green Wedges. Growth corridors were designated to conserve open areas ‘which would provide breathing spaces and areas of visual stimulation and recreation close to the settled areas’. The report also recognised the importance of the provision of adequate space for active and passive recreation within the existing and proposed built up areas, together with the need for participation of the public in the planning process.

In 1988, the Ministry for Planning and Environment released the Metropolitan Open Space Plan, at that stage the most comprehensive consideration of public open space in Victoria’s history. The study focuses on conservation, provision and distribution of public open space. Recognising that it is ‘important to preserve suitable open space for future needs in the light of long-term demographic changes’, the plan posited a series of guidelines that prohibited the sale of public open space of high current or potential value unless a replacement site in the immediate area of equal value was then reserved. Increases in the total area of public open space were appropriately viewed alongside the imperative of maintaining, if not increasing the area of public open space per capita.

The current Victorian Government policy document in relation to open space is Linking People + Spaces: a plan for Melbourne’s open space network. Prepared by Parks Victoria and developed in line with Melbourne 2030, Linking People + Spaces sets out a vision for preserving, managing and developing public open space in metropolitan Melbourne. These broad strategies and actions are developed further in a set of metropolitan-wide

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4 National Trust of Australia (Victoria), Submission No 54, p 6.
6 Ibid
7 Ministry for Planning and Environment, The Metropolitan Open Space Plan, 1988, p 32.
principles to guide management and decision making in *The Parklands Code*, the adoption and implementation of which is one of the Melbourne 2030 initiatives. Chapters 3 and 4 of this report discuss The Parklands Code and Melbourne 2030 in detail.

71. Also discussed in this report is the Government’s Green Wedges policy. Green Wedges form a part of the network of open space in non-urban areas of metropolitan Melbourne, and serve to safeguard agricultural land uses, non-renewable resources, rural and scenic landscapes and native flora and fauna.

1.3.2 Role of Public Land

72. Despite Australia having more open space per capita than almost any other nation, population growth and the consolidation and densification of the built urban environment mean the importance of open space is also increasing. Recent ABS population statistics reveal Victoria has 22.6 people per sq km, about eight times the national average population density of 2.7 people per sq km. The next highest state in population density is NSW, with 8.5 people per sq km. These figures signal an even greater need for the protection of public land and open space.

73. The Committee notes the statement by the Minister for Environment and Climate Change that there has been an increase in Crown land listings and an increase in the total area of public parks during the current Government’s term in office. However, evidence illustrates the real value of public land and open space is not just in its quantity or total area, but is absolutely dependent on its location and accessibility.

74. Public open space is undoubtedly an important community asset and contributes significantly to the liveability of a city. Public open space provides opportunities for active and passive recreation, the preservation and protection of the environment, and the provision of necessary physical and social infrastructure in communities.

75. Melbourne is frequently classified as one of the world’s most liveable cities. The Government actively promotes Victoria as ‘a great place to live, work and

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raise a family’. However, this ‘liveability’ status is threatened by a combination of growth factors that are placing greater demands on infrastructure such as public transport, road networks and the availability of public open space.

76. Although the availability of local open space is a vital factor in perceptions of urban liveability, the Australian Institute of Urban Studies notes that neither Parks Victoria, nor any other agency, monitor visitation and usage patterns of open spaces across the metropolitan area. As noted in Chapter 3, there is no enforceable provision of public open space in new developments and as such is left to the discretion of local councils.

77. Nationally, the design of environments for health and wellbeing is acknowledged in Healthy Spaces and Places, a draft Australia-wide policy framework to address the role of the built environment and its influences on people’s health:

Communities where consideration for people’s health is part of the planning process, create a more sustainable community by contributing to outcomes such as reducing car emissions, having more active and healthier people, and creating safer and more socially connected communities.10

The provision of sport and recreation facilities for structured active recreation is an issue facing many Australian communities. The cost of provision and maintenance is forcing the amalgamation to regional level facilities from provision at the local level. This is leading to metropolitan and regional land supply issues for suitable sites and to decreases in participants accessing such facilities by walking and cycling.11

78. The Healthy Spaces and Places early consultation process identified several gaps in existing practice. Of particular relevance to this Inquiry was the specific need to:

- generate a supportive approach to cross-government partnerships – local, state, territory and Commonwealth;

- improve understanding that some market efficiencies are counter to improved health outcomes and community benefit;

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• better manage land use and transport systems, and the need for integration and consolidation.  

79. Other public health and urban design commentators point to a significant and growing body of evidence that clearly demonstrates parks and nature are essential for our wellbeing.  

80. Associate Prof Mardie Townsend, of the School of Health and Social Development at Deakin University, presented evidence to the Committee on the health benefits of contact with nature generally, and the critical role of public, green, open spaces in the urban environment specifically. While the benefits of physical exercise are well-documented, Prof Townsend highlighted the social benefits of open spaces:

[The] social capital dimension of life is a really important one in our society - as we grow in size, we need to actively promote connections between people, and parks and public open spaces are a key setting for this.  

81. Open spaces reduce stress and fatigue, boost immunity, enhance concentration and productivity, and promote good mental health and physical healing. They allow opportunity for recreation and leisure, recycle air, preserve and provide habitat for biodiversity, serve as wildlife corridors, reduce stormwater run off and have a cooling effect on high-heat areas within cities.  

82. Evidence highlighted throughout this report also illustrates the significance of protecting the environmental and heritage values of public land and open space. A number of submissions and case studies examined the potential threat proposed developments will have upon nature conservation, biodiversity, heritage, geological or landscape values.  

83. Relevant case studies referred to later in this report highlighting environmental issues include:  

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14 Associate Professor Mardie Townsend, School of Health and Social Development, Deakin University, Transcript of Evidence, p 223.  
• Kew Residential Services – loss of heritage trees and damage to natural environment;

• Devilbend Reserve – loss of 40 hectare site and its negative impact on protecting biodiversity on Mornington Peninsula and water catchment;

• proposed development on Port Campbell headlands and concerns over geological stability, cultural heritage issues and other impacts;

• proposed sale of VicRoads public land for private development within the Merri and Edgars Creek parkland and its potential effect upon loss of open space and environmental/ecological impacts; and

• proposed development of land in the City of Greater Geelong and its impact upon an environmentally sensitive corridor of wetlands from Lake Victoria to Ramsar listed Swan Bay.

84. The Committee’s evidence also highlighted the role of public land and open space as an important form of infrastructure that must be factored into long term planning frameworks. The Government appointed Melbourne 2030 Audit Expert Group spoke of the importance of public open space in infrastructure planning

Prof. MOODIE —I think as a group we were very strongly supportive of the notion to really look beyond 2030, and in all forms of infrastructure planning. Public open space is a form of fundamental community infrastructure, so are schools, so is transport, so is industry. In our report we said we should be thinking in a 60 to 90-year time frame. The government said no, that was too difficult. We would still disagree with them, but the point is that children who are born now will be alive at the end of the century. We have to think about that and think about the competing pressures on all forms of infrastructure. We also were, I guess, encouraging the notion of an ongoing infrastructure fund where this was really thought about, that infrastructure was automatically sort of built into the budget cycle — looking after infrastructure, renewing it, re-establishing it in all these forms rather than having to go back all the time for new money. I think in this area too it is important that systematic long-term thinking about how public land is used is part of overall planning framework.16

85. The contents of this Report, and the overwhelming evidence received illustrates the important role of public land and open space and the urgent need to reverse the current systemic bias towards the sale and disposal of land for financial gain to the detriment of communities.

CHAPTER 2:
Government Process for Management and Disposal of Public Land

86. This chapter provides an overview of relevant Victorian legislation and State Government policy frameworks for the management and disposal of public land incorporating evidence received in relation to the appropriateness of existing policy. A further detailed discussion of these policies and practice as they relate to Melbourne 2030 policy and Green Wedges is provided in Chapter 4.

87. The summary of various Ministerial and departmental roles and functions with respect to public land and open space illustrate the multiple layers of responsibility that exist in the present State Government system of managing public land.

88. It is worth noting at the outset that the Committee experienced considerable difficulty in obtaining a clear understanding of the Government frameworks and processes in place to manage the use, disposal and development of public land in the State. This was due in part to shifts in certain departmental functions during the course of the Inquiry and also to the Government’s obstruction of evidence, in terms of both documents and witnesses, and refusal to discuss all aspects of the Committee’s reference (refer to discussion in Chapter 1).

89. A further layer of complexity from both the Committee’s and community’s perspective lies in the different interpretations and meanings of ‘public land’ according to various Acts and policies, and in particular the lack of transparency over the application of Administrative Arrangements Order No. 58 which the Government used to limit its evidence to the Committee’s Inquiry. It should be noted that the community and the Committee had no difficulty in understanding the meaning of public land. The Committee’s adopted definition was based on common, publicly accepted interpretations of the meaning of public land and was supported by a range of groups and local councils during evidence to the Committee.
2.1 Relevant Legislation

90. In Australia, individual state and territory governments are responsible for the management of public land. Land use and planning decisions are determined through government processes that vary between states.

91. In Victoria, the following legislation applies to the management and use of public land, including Crown land.

*Land Act 1958*

92. The Land Act 1958 deals with:

- Crown grants,
- Land leases, including, agricultural and non-agricultural purposes (including for electricity lines),
- The sale of land process,
- Reclaimed land,
- Residential areas,
- Vacant and unclaimed lands, and
- Watercourses and water frontages.

93. The principal Minister responsible for this Act is the Minister for Environment and Climate Change. Significant areas of public land still fall under this Act, and it also has a role in defining the ‘default’ land regime – in the absence of a decision the land reverts to ‘unalienated and unreserved land of the Crown’.

94. As discussed later in this Chapter, the Minister for Environment and Climate Change has the power under the Land Act and the subsequent Administrative Arrangements Order No. 58, to classify various parts of Crown land as ‘public land’ which cannot be sold. Nevertheless, this Order bears absolutely no relationship to the common meaning of the words or to the community’s understanding of public land.
Crown Land (Reserves) Act 1978

95. The Crown Land (Reserves) Act 1978 serves as the primary instrument for the statutory protection of Crown land by providing a mechanism for the temporary or permanent protection of land. Reservation prevents the sale of land in the absence of explicit provision for sale in an Act. Removal of the protection can be achieved by revoking the reservation – by notice for temporary reservations, or by Act of Parliament for permanent reservations. A recent example of this is the Land (St Kilda Triangle) Act 2006 (Vic).

96. The principle Minister responsible for this Act is the Minister for Environment and Climate Change.

Planning and Environment Act 1987

97. The Planning and Environment Act 1987 is administered by the Minister for Planning and outlines the process and creates the framework for the development of land. It has provisions relating to:

- Planning provisions and schemes,
- Green Wedge protection,
- Growth areas,
- Planning permits.

Land Acquisition and Compensation Act 1986

98. This Act is administered by the Attorney General and provides for the acquisition of land, including the payment of compensation, temporary occupation of land and determination of disputes.

Transfer of Land Act 1958

99. The Transfer of Land Act 1958 creates the system for recording land transfers. The principal Minister responsible for this Act is the Attorney-General.

Other Acts

100. Public land other than Crown land is commonly protected by individualised Acts such as the National Parks Act 1975 (Vic), the Coastal Management Act
1995 (Vic) and the *Forests Act 1958* (Vic). The various Road and Transport Acts, and the power they confer on Government agencies such as VicRoads and VicTrack, represent an additional layer of legislation affecting public land acquisition, management and disposal.

101. Some evidence put to the Inquiry, together with other expert commentary, considers the legislation with respect to Crown land dated and overly complex. The City of Whittlesea claimed ‘the *Crown Lands (Reserves) Act* and its classification of land into unreserved, temporarily reserved and permanently reserved Crown Land is obsolete. It reflects an era when Crown land was synonymous with public land and freehold land was synonymous with private land. This distinction is increasingly irrelevant’.17

102. The Interface Councils, drawing on the work of the Public Land Consultancy, (see below) urged the Committee to consider ‘a more simplified version of the public land categories and to do away with the obsolete and redundant 19th-Century categories’.18 It was proposed that public land be reclassified into land of state and local significance, as well as ‘operational’ land (State schools and water catchments, for example) and that management be transferred according to its significance. Thus, public land of National, State or regional significance such as national parks, coasts and the Royal Botanic Gardens would be under State jurisdiction and managed by a State government agency with a mandate to protect the public interest; public land of local or neighbourhood significance would be managed by local councils, and used and developed in accordance with the relevant planning scheme, not the *Crown Land (Reserves) Act*.19

103. Mr David Gabriel-Jones of the Public Land Consultancy has written that ‘many Crown Reserves need not, and should not be Crown land at all. They should be handed free of charge to Councils to hold in freehold title, subject only to the controls available under the *Planning and Environment Act*.20 This point is discussed in Section 2.4.2 later in this Chapter.

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17 City of Whittlesea, *Submission No 51*, p 3.
18 Interface Councils, *Transcript of Evidence*, 27 November 2007, p 111
20 Ibid.
104. A proposed Public Land Sustainability Act was developed by Mr Gabriel-Jones in 2003 to replace and/or rationalise existing legislative provisions for management, protections and use of public (Crown) land (Appendix 10). The Committee commends this work and urges serious consideration of wider-ranging review and reform of the current system.

**RECOMMENDATION 2.1**

That the Government review existing legislative frameworks that govern the management, use and disposal of crown land.

2.2 *Departmental Responsibility*

105. As noted earlier, responsibility for the sale, development and management of public land in Victoria is spread across a number of Government departments and agencies. The above also illustrates the numerous statutory instruments pertaining to land management in the State.

106. The Government provided the Committee with a ‘whole-of-Government’ written submission to the Inquiry, with Treasury and Finance being the lead department for the purpose of the sale and development of public land and open space. Other key departments that contributed to the Inquiry included the Department of Sustainability and Environment (including relevant agencies such as Parks Victoria), the Department of Planning and Community Development, and the former Department of Infrastructure.

107. While the Government provided the Committee with a broad overview of the roles and responsibilities of various departments and agencies, its contribution to the Inquiry was very much limited by virtue of the Attorney-General’s narrow interpretation of the Committee’s terms of reference and strict adherence to an obscure Administrative Arrangements Order.

108. Accordingly, as outlined later in this report, the Committee was unable to obtain specific evidence from the Government on its roles and responsibilities with respect to important public land sites proposed for sale and/or development including sites at Kew, Port Campbell and Devilbend. Further, the Committee’s request for public land data in order to assess the extent of land being sold or developed throughout the State was not provided to the Committee despite various requests (refer to previous discussion in Chapter 1).
109. The following Government departments and agencies were identified as having roles and responsibilities in the sale and management of public land, including Crown land.

### 2.2.1 Department of Treasury and Finance

110. The Land and Property Group of the Department of Treasury and Finance (DTF) is responsible for dealings in respect of land, having the power to:

- sell, acquire, lease and licence land pursuant to the *Land Act 1958*,
- sell land held in freehold title under the *Sale of Land Act 1962*, and
- acquire, lease and license land and premises under the *Financial Management Act 1994*.

111. The specific responsibilities of the Land and Property Group include:

- selling surplus Crown Land and freehold land on behalf of other Government agencies,
- arranging valuations of land,
- ensuring all required due diligence is completed prior to sale,
- enhancing the value of surplus land prior to disposal by facilitating planning scheme amendments prior to the sale,
- identifying and purchasing suitable property for other Government agencies by negotiation or compulsory acquisition when necessary,
- assisting agencies with strategic property asset planning project management and land transfers,
- providing high-level planning advice on all planning schemes and zoning issues,
- undertaking environmental assessments of Crown and freehold land,
- implementing remediation strategies for contaminated sites including engaging consultants and contractors,
- creating and issuing Crown grants – land titles – for land sold,
- managing surplus land and property held by the Department of Treasury and Finance.

112. The key Government policy examined by the Committee with respect to the sale of public land is managed by DTF and is discussed in detail later in this Chapter.
2.2.2 Department of Sustainability and Environment

113. The Department of Sustainability and Environment (DSE) supports the Minister for Environment and Climate Change in fulfilling his/her responsibilities under the *Land Act 1958*. The Minister for Environment and Climate Change, administers the legislation related to the management of Crown land categorised as ‘public land’ in line with Administrative Arrangements Order No. 58. DSE is responsible for the assessment of public land values against the criteria referred to in section 2.3.2 of this Chapter.

114. Further, when a Department or agency identifies land as surplus to its requirements, the Department will, upon request, undertake an assessment to determine whether retention of the land in public ownership is necessary to protect any residual biodiversity, cultural or community-use values. Land that has no public values is assessed as ‘government land’ and the Minister for Finance will consider its future, including sale.

115. At the commencement of the Committee's Inquiry, the Government’s planning functions and responsibilities, including Melbourne 2030 and Green Wedge policy, came under DSE. However, these functions were transferred to the Department of Planning and Community Development in 2007.

116. Department of Sustainability and Environment agencies relevant to public land management include:

- **Parks Victoria** – manages parks, reserves and other land under State control.

- **Victorian Coastal Council** – responsible for the strategic planning and management of Victorian coastal areas.

- **Victorian Environmental Assessment Council** – upon request by the Government, VEAC investigates matters relating to the protection and ecologically sustainable management of the environment and natural resources of Victoria’s public land.

2.2.3 Department of Planning and Community Development

117. The Department of Planning and Community Development (DPCD) manages the regulatory framework for land use planning, environmental assessment and subdivision. The Office of Planning, Heritage and Urban Design within the Department provides statutory and strategic planning information and advice on planning policy and urban design, and operates a number of
planning projects and programs. These functions cover the coordination and implementation of Melbourne 2030, including the Green Wedge Management Plan project, and the role of the Government Land Monitor.

118. The Department of Planning and Community Development plays a lead role in co-ordinating and overseeing the implementation of the Melbourne 2030 policy across Government. The Department plays a role in leading initiatives identified in the implementation program, and provides policy guidance and funding to enable local government to undertake implementation work. Chapter 3 deals with Melbourne 2030 and Green Wedges policies in detail.

119. The Department also provides advice and support to the Minister for Planning in fulfilling his/her responsibilities under the Planning and Environment Act 1987.

**Government Land Monitor**

120. Operating within the Department of Planning & Community Development, the role of the Government Land Monitor (GLM) is ‘to provide Government with an assurance of accountability and integrity in land transactions. It must ensure that transactions are legal, are in the public interest and provide best results for government.’\(^{21}\) The prior approval of the GLM must be obtained for any transaction above the threshold (presently set at $250,000).

121. The Government Land Monitor is responsible for applying the principles of the Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land to all land transactions submitted to it, these principles include:

- consideration as to whether the land is zoned appropriately,
- that valuation advice has been received,
- that legislative approvals have been obtained (if required), and
- that adequate due diligence has been undertaken.

**Committees of Management**

122. Under the Crown Land (Reserves) Act 1978, committees of management are responsible for the management, improvement and maintenance of their

\(^{21}\) Department of Infrastructure, Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land, August 200, p 1.
reserve. A committee manages the reserve on behalf of the Minister for Planning, and may comprise of locally elected or appointed citizens, a municipal council, statutory bodies or trustees.

123. There are approximately:

- 1700 reserves managed by local committees of management;
- 2800 reserves managed by municipal councils as committees of management;
- 2900 reserves managed by statutory bodies or government agencies.

### 2.2.4 Department of Innovation, Industry and Regional Development

124. Major Projects Victoria (MPV) is a division of the Department of Innovation, Industry and Regional Development (DIIRD) which plans, manages and facilitates key Government infrastructure and land development projects. MPV performs a significant role in relation to the development of surplus Government property, including arranging its sale. This division is also a leading provider of project management services for complex property development and construction projects for other Government agencies.

125. Major Projects Victoria is the key Government agency responsible for the development of the former Kew Cottages site which was the subject of a large body of evidence received by the Committee. Unfortunately, the Government denied the Select Committee access to discuss the Kew Residential Services issue and other matters with MPV.

### 2.2.5 Department of Transport

126. The Department of Transport came into operation in April 2008 following a departmental restructure which saw the abolition of the Department of Infrastructure and the movement of Major Projects Victoria to DIIRD (see above). Within the Department of Transport are relevant Government agencies that have responsibility for public land, including VicTrack and VicRoads.

**VicTrack**

127. VicTrack is a statutory corporation established under the *Rail Corporations Act 1996*. It has a strategic role in ensuring that its land holdings remain
relevant to the provision of public transport, and aims to maximise return for
government and communities in land transactions.

128. VicTrack also has a statutory obligation to improve the value of land and
assets under its control. As such it aims to identify possible commercial
development sites, and seeks the participation of developers in relation to
construction.

**VicRoads**

129. VicRoads is a body corporate established under section 15 of the *Transport
Act 1983*. It possesses a range of powers, including the ability to buy, sell,
lease or take on a lease in relation to land and personal property.

130. In accordance with the *Planning and Environment Act 1987* and
*Environmental Effects Act 1978*, VicRoads plays a role in relation to
development of land supporting infrastructure.

131. VicRoads' land holdings fall into 3 broad categories:

- land which currently constitutes a reservation for an existing road;
- land required to provide a future new road or expansion to an existing
  road; and
- residual holdings following road construction or removal of an
  acquisition overlay.

132. When VicRoads disposes of marketable quantities of land, this is done in
accordance with the Government Land Monitor’s guidelines.

### 2.3 Government Policy for the Sale and Disposal of Land

133. The *Policy and Instructions for the Purchase, Compulsory Acquisition and
Sale of Land* (2000), developed by the former Department of Infrastructure,
are the guidelines to which all government agencies and authorities must
adhere in any property transaction. The policy sets out the role of the
Government Land Monitor; deals with the valuation, sale and purchase of
land; details administrative procedures and instructions; and provides
particular instruction for contaminated land, and land to which the *Native Title
Act* may apply.
134. The Department of Treasury and Finance, in its whole-of-Government submission to the Committee, provided a flowchart tracing the process of disposing of surplus Crown land in accordance with the Policy and Instructions. This has been included as Appendix 11.

135. Briefly, the first step in disposing of a Crown land parcel is determining that the site is surplus to the ongoing requirements of the managing department or agency. If a parcel is deemed to be in surplus, it is then referred to the Department of Treasury and Finance for consideration and disposal. The Policy and Instructions provide that other departments and agencies have the first right of refusal. If a state department or agency does not express an interest in the land, it may be offered to the relevant local council conditional upon the land being used for a public purpose. It may also be offered to a Commonwealth department or agency, or sold by public auction, tender, other public process, or by private treaty with Ministerial approval.

136. The Policy and Instructions provide that all public land must be sold by public auction, tender or other public process unless exceptional circumstances apply, and that land must not be sold for less than the market value, or less than the value assessed by the Valuer-General. For transactions of less than $250,000, one valuation made by the Valuer-General or a valuer who is member of the whole-of-Government panel of valuers must be obtained; for those above $500,000 a second valuation is mandatory.

137. Several areas of this policy in particular, and the accompanying State Government processes for disposing of public land in general, were highlighted repeatedly throughout the Inquiry as in need of review. The Committee believes that reforming the Government’s guidelines for the sale and disposal of public land would contribute significantly to preserving public land resources, and to achieving greater accountability and community involvement in the management of public land. The evidence and findings detailed below represent distinct steps in the process of public land disposal, as understood by the Committee.

138. The Committee notes that policy initiative 6.1.7 of the Melbourne 2030 strategy (detailed in Chapter 4) expresses the Government’s intention to ‘change the policy that governs the disposal of government land’. The Committee’s evidence outlined in this Chapter supports the need for a change
in Government policy relating to the disposal of public land; however it is not clear that this is occurring.

2.3.1 Determining land as surplus

139. The Committee understands State Government departments and agencies conduct routine assessments as to the functionality and efficiency of parcels within their land and property portfolios. If an asset is no longer seen to be contributing to effective service delivery, it is identified as ‘surplus to operational requirements’.

140. The Government processes for determining land as surplus and the disposal of surplus parcels were the subject of a series of concerns raised throughout the Inquiry, particularly from within local government. In summary, these included

- a lack of clarity and transparency;
- an absence of formal guidelines for the process;
- inadequate assessment processes; and
- no assurance of maximum community benefit.

141. The Director of the Land and Property Group within the Department of Treasury and Finance stated in her evidence to the Committee that:

> When I referred to ‘surplus to operational requirements’ I was making reference to the asset management framework. Within that there is an obligation on government departments and agencies to make sure that they are managing their asset portfolios very efficiently. Sometimes an asset over time will no longer be contributing to service delivery... Every department or agency will make that assessment based on factors like what that property or infrastructure is contributing to a whole range of things... It is a subjective test, yes... To my knowledge there are not guidelines. There is not a checklist that says, ‘If something meets all of these criteria, it is surplus.’

142. Evidence put to the Committee from other relevant departments similarly implied the identification of land as surplus to operational requirements was often subjective and could, in some cases, be based purely on ministerial discretion. For example, Mr Ronaldson, of the former Department of Infrastructure stated that ‘the minister and the government will have a view

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22 Ms T. Hart, Director of Land & Property Group, Commercial Division, Department of Treasury and Finance, *Minutes of Evidence*, 29 October 2007 p 125
about which bits of land, from time to time, are to be disposed of as opposed to retained.'²³

143. Evidence also suggested that the identification of land as surplus to operational requirements establishes that an asset is surplus to a particular State Government department or agency’s immediate requirements, but not that it is surplus to community requirements, now or in the future. In his evidence, the Chief Executive Officer, City of Stonnington, commented that:

essentially governments make a decision as to whether a piece of land is surplus to their requirements, and the key words are ‘their requirements’… One of the problems, it seems to me, is that in an urban area we make judgements primarily on a business case based on the narrow interests of the agency who happens to have the land at the point in time.²⁴

144. In its comprehensive submission to the Inquiry, the Municipal Association of Victoria (MAV) observed that the decision making process around determining an asset as surplus ‘appears heavily biased toward the potential contribution to service delivery by a single government agency. There is currently no formal opportunity for adequate local government or community input into the decision making process.’²⁵

145. The internality of the process was the subject of significant concern, particularly from local councils. The City of Boroondara argued that public land is a community asset that should not be ‘treated merely as “real estate” available to be traded incrementally on a site-by-site basis as a surplus commodity at highest market value’.²⁶ Similarly, the City of Stonnington argued that ‘Government departments are custodians of lands acquired, and the sale and development of these lands should not involve a simple commercial transaction process, but a strategic outlook and approach that considers the needs of future generations.’²⁷

²³ Mr Ronaldson, Secretary, Department of Infrastructure, Transcript of Evidence, 31 January 2008, p 239.
²⁴ City of Stonnington, Transcript of Evidence, 30 January 2008, p 203.
²⁵ Municipal Association of Victoria, Submission No 100, p 5.
²⁶ City of Boroondara, Submission No 127, p 2.
²⁷ City of Stonnington, Submission No 71, p 5.
146. Generally, a number of witnesses contended that the default position should be retention of public land and open space, with the onus on government (as against community) to ‘prove there is not any value in retaining that land.’

147. Further submissions from local government suggested land that is surplus to a particular agency’s requirements could be utilised to meet local needs and aspirations, and/or regional and state strategic objectives. Surplus sites could be developed for community infrastructure, or maintained as public open space. The availability of a parcel of public land therefore represents a ‘one-off opportunity’ that should be maximised.

148. Several submissions commented that a growing population required more Maternal and Child Health Centres, sports and aged care facilities, and a more strategic use of public land to allow for the development of this infrastructure. The submission from Darebin Council observed that ‘at typical inner urban land values, it is impossible to retrofit a dense urban network with open space and consequently existing undeveloped areas of public land make a significant contribution to the perception as well as the actuality of open spaces.’

149. Bayside City Council saw the State Government as ‘having a role to play in attenuating the implications and impacts of increasing residential population density in areas such as major activity centres, including greater demand for, and preservation of, open space and community infrastructure.’

150. The Committee was made aware of at least two existing policy initiatives that relate to improved assessment processes and use of land that is surplus to an individual department or agency’s requirements: The Parklands Code states that the ‘environmental and recreational value of surplus government land will be fully evaluated before any decision is made on a proposal to sell land held by the Crown, a government department or a statutory authority’; and Strategy 4.3 of A Fairer Victoria recommends that surplus parcels be used to meet the urgent need for residential care facilities for older people. The level of community and council concern and dissatisfaction with respect...
to land that has been deemed surplus indicates an urgent need to monitor whether, and if so, how effective these policies are being implemented.

151. However, it was also recognised that some areas of public land (unused government roads, for example) have limited current or future public benefit. Nillumbik Shire Council submitted ‘there will always be certain sites that do not contribute to current community needs, and are not required for future identified needs. These surplus sites should be seriously considered for sale, to enable the resources to be allocated to meet current and future community needs.’ The City of Whittlesea similarly stated that ‘An appropriate, transparent disposal of such land has significant potential to generate income for current open space priorities (waterway protection and restoration, acquisition and management of conservation reserves, shared trails and rail trails, active recreational areas).’

152. In order to optimise the potential of surplus public land, further information and coordination are required. A lack of coordination in the process of determining sites as surplus, and in managing the disposal of those sites, can result in missed opportunities. Land that has been deemed surplus to requirements, but then left in hiatus for extended periods can become degraded. Local governments noted that failing to dispose of land that has been classified as surplus deprives councils of potential rate revenue. Therefore, a more ‘active’ approach to public land management is critical.

**FINDING 2.1**

The current process for the identification and determination of land as surplus requires review and reform. There is a lack of uniform, consistent and transparent processes, and a lack of consultation with local government and community.

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33 Ibid, p 2.
34 City of Whittlesea, Submission No 51, p 3.
35 Nillumbik, above n 31, p 2.
**RECOMMENDATION 2.2**

That a set of formal guidelines be developed for identifying Crown land as surplus. These should include provision for adequate assessment of any existing or potential community uses and values attached to land by ensuring:

- a formal opportunity for input by local councils and communities, where reasonably possible, prior to the State Government determining land as surplus;
- a full assessment of the strategic, long term value of the land against state-wide policies, priorities, criteria and local needs; and
- an open and transparent process where reasonably possible.

**2.3.2 Classification and assessment of public land values**

153. As discussed in Chapter 1, the Government has adopted a definition of public land that derives from Administrative Arrangements Order No. 58, an agreement between the then Minister for Conservation, Forests and Lands and the Minister for Property and Services in 1988 that distinguishes, for the purposes of sale, ‘public land’ as land with a public value that cannot be sold, from ‘government land’ that may be sold.

154. According to the Administrative Arrangements Order, ‘public land’ is Crown land which meets one or more of the following criteria:

- The land has conservation significance for present or future generations.
- The land has such historical significance, that is should be retained as part of the public estate for present and future generations.
- The land has recreation or tourism significance for present or future generations.
- The land has natural resource production/utilisation significance for present or future generations (for example, land used for timber production or water catchment).
- The land has social or cultural significance (including special significance for the Aboriginal community) for present or future generations.
- The land has other special value (including areas that although not needed to satisfy a known demand, are of value to meet future needs as yet undefined, including all land under LCC recommended zones currently termed uncommitted. In future this land will be termed forest).
155. The Committee believes the above criteria for determining whether land is public land and therefore should not be sold are basically sound, but should include a recognition of the public open space value. However, the Committee also has concerns with the application and transparency of Department of Sustainability and Environment assessments with respect to public land. The evidence outlined below therefore raises doubt over the relevance of this assessment process in its existing application.

156. Establishing if the land is ‘public’ or ‘government’ according to the Administrative Arrangements Order detailed above represents a related, though apparently distinct, step in the process of land disposal. For a parcel to be eligible for sale, it must not have any public values attached to it. The recommendations regarding improved assessment processes for surplus parcels above apply similarly to this step.

157. The whole-of-Government submission to the Committee summarised the criteria for public land listed in the Administrative Arrangements Order as ‘any residual biodiversity, cultural or community use values’ and a consideration as to ‘whether retention of the land in public ownership is necessary to protect these values.’ The findings of the land assessment by the Department of Sustainability and Environment are recorded in an ‘Assessment and Evaluation Report’ that is supplied to the Department of Treasury and Finance.

158. The Secretary of the Department of Sustainability and Environment noted guidelines currently in use by the Department in the assessment process were determined by a previous government and have not been updated to reflect current policy. The Committee notes with concern the lack of clear and current guidelines and subjective nature of the process for determining ‘public values’. For example, Mr Harris, Secretary to the Department of Sustainability and Environment stated that

There are a set of guidelines which we use, but I do not think you could in any sense say they are objective. It is very hard to turn into an objective outcome a complex series of assessments. Ultimately, it will be the judgement of the relevant Crown land manager and the advice

36 Department of Treasury and Finance, Submission No 109, p 10.
that he or she has managed to put together via a process for doing so that is described inside the Department. There is a form which is filled out and supplied, as I said in my evidence, to the Department of Treasury and Finance which covers this off in the case of each piece of land we reassess... The guidelines are an interesting document. They date from 1998 and are an object effectively determined at the time of the previous government.37

159. Moreover, it is unclear to the Committee whether this assessment is made only on request, or on a mandatory basis. Evidence heard from several departments was conflicting on this point. For example, the whole-of-Government submission prepared by DTF, as well as evidence from Minister for Environment and Climate Change, and DPCD implied that DSE carried out an assessment for public values as a matter of course for every surplus site. However, in their prepared statements to the Committee, both Mr Harris (DSE) and Ms Hart (DTF), claimed that assessment was undertaken “when requested” and “generally, upon request”.

160. A further issue of key concern to the Committee, and reflected in many community submissions to the Inquiry, is the lack of opportunity for community input at this point in the disposal process.

Research will be undertaken as to whether there are extant advices in relation to that – for example, the Victorian Environmental Assessment Council – in terms of reports and recommendations... We will do a native title assessment and see whether native title has been extinguished. We will also undertake field assessments on vegetation type; topography; present use; any modifications; the status and use of adjoining land...; cultural and historic values; social, community interests; recreation tourism values; resource production values; and strategic values... Consultation processes will be undertaken and then a recommendation is provided back to the Department of Treasury and Finance... and then the relevant agency will be informed. The decision-making process from there on is a matter for the agency and, if necessary, for the Department of Treasury and Finance. That is how an assessment is undertaken.38

161. It is not clear to the Committee what formal mechanisms, if any, are in place to facilitate community and local government input into DSE’s assessment of public values attached to a parcel of land. Where a parcel of Crown land is temporarily or permanently reserved, the reservation must be revoked before the land can be offered for sale. While the Committee notes that any

37 Department of Sustainability and Environment, Transcript of Evidence, 19 November 2007, p 8.
revocation must comply with the *Crown Land (Reserves) Act 1978* which provides for public notification and input into the process, this appears to be the only opportunity for such participation.

162. In sites where no reservations applied, the evidence received from DSE about the nature and extent of public consultation in the assessment process suggested that opportunities for public input were likely to be limited, informal and arbitrary.

Generally, while there is not necessarily a public notification process when the assessments are undertaken, there will be information sought from local groups that might be interested. It is more of a direct approach to local interested parties, rather than a general call for information or for interest about a particular site... The opinions of many groups that are sought during the process are considered in making the recommendation but not afterwards.39

163. The Administrative Arrangements Order criteria refer to land that has conservation, historical, recreation and tourism significance. Evidence outlined in Chapter 5 dealing with sale, alienation and/or development at many sites around Victoria strongly suggest a number of these, if not all sites referred to the Inquiry should fall under the above criteria in one or more ways. While the Government declined to comment on these land sales and developments, no evidence was provided to the Committee by the Government explaining how the above sites were assessed as having no public land values.

164. The City of Moonee Valley proposed that State Government departments and agencies be required to prepare a ‘net community benefit’ assessment as part of any proposal to sell or alienate public land40.

**FINDING 2.2**

The Committee finds the assessment of public land values is an important step in the process of considering future use and development of land parcels. Evidence received by the Committee suggests the current assessment criteria and processes are not widely known by the public and do not always involve the community.

40  *City of Moonee Valley*, Submission No 92, p 4.
FINDING 2.3

The current approach to Crown land classification is ad hoc, lacks transparency and needs to be reviewed and reformed. A new process should be inclusive of and open to the community, local councils and any other relevant interested parties. Open space requirements should become explicit criteria in these new guidelines.

RECOMMENDATION 2.3

That any land deemed by a Government department or agency as surplus to its requirements be subject to a comprehensive assessment, incorporating a formal mechanism for local government, stakeholder and community input, and be based on public value criteria including conservation, historical, recreation, tourism and cultural significance.

2.3.3 Target figures for the sale of Crown land

165. The Committee has some concerns with the practice of selling Crown land determined by Government as surplus as a means of revenue-raising, and of estimating target figures for the sale of assets, including public land. The Committee notes the specific function of the Land and Property Group within the Department of Treasury and Finance to manage ‘the sale of surplus Crown land to meet government revenue targets including overseeing delegated sales by other departments.’

166. The 2007-08 target for revenue from the sale of Crown land, as set out in the Budget Papers, was $70 million. The Department of Treasury and Finance advised this target is established by reference to an estimate of what properties are likely to be identified or have already been identified as surplus and therefore may be sold.

167. In the public hearing with the Department of Treasury and Finance, the Committee noted a potential conflict with respect to the rezoning process involving land considered as surplus and in the need to meet the Government’s target for proceeds from the sale of land.

168. In terms of setting targets, a former manager of the Asset Management Division under the Department of Treasury and Finance, and current adviser to the Land and Property Group, Mr Peter Carroll, explained the figure was

'based on what I knew was in the pipeline, what I thought was likely to come our way and what I thought might be best for a challenge for the staff to stretch themselves.'

169. In his evidence to the Committee, Mr Wright, a member of the Melbourne 2030 Audit Expert Group observed that:

when [land] does become surplus to requirements, it is regarded as sort of an asset of that particular fiefdom, and it is almost their obligation to protect it as though it is some sort of personal asset and when disposing of it ensure that it produces the largest economic return.

170. A focus on monetary gain may also preclude adequate consideration of the social and environmental dimensions of a disposal decision. In commenting on the functions and objectives of the Land and Property Service Group within DTF, one council observed that:

what is noticeably missing from these functions is a flexibility to take into account potential community benefit... If current revenue targets are kept there is incentive to simply maximise financial value/return and little incentive to maximise social, environmental or [other] economic returns.

**FINDING 2.4**

Public land and open space is becoming more important to the community as population and housing densities increase. Artificial government targets for the sale of public land risk placing short term financial considerations ahead of long term planning and management of public land for community benefit.

**FINDING 2.5**

The Department of Treasury and Finance budget target for the sale of surplus Crown land may act as an artificial driver to the sale of public land. The target implies a possible conflict of interest between achieving the best outcomes for the community and achieving departmental sales targets.

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RECOMMENDATION 2.4
That the Government investigate and develop a strategic approach to valuing public land which incorporates social, environmental and other values.

RECOMMENDATION: 2.5
That the Government regards budget estimates for the proceeds of Crown land sales as predictions rather than targets to be met.

2.4 Common Concerns over the Government Process for Management and Disposal of Public Land

171. In addition to the specific concerns mentioned above with respect to the Government’s Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land, the Committee received a large volume of evidence, particularly from local government, highlighting concerns over the broader Government process for the management and disposal of public land (including Crown land).

172. Key concerns raised and dealt with in the following section include:

- concerns from local government over the process involving sale of Government land to local councils;
- lack of a comprehensive, publicly available data base or register of public land holdings, including land deemed as surplus, land sales and transfers;
- lack of co-ordination with respect to management of land; and
- need for an independent, centralised body to oversee public land land management and disposal.

2.4.1 Need for a Comprehensive Register / Data Base of Public Land

173. Evidence received by the Committee indicates a significant level of community concern that there is currently no comprehensive, publicly available information regarding public or Crown land sales and transfers, or indeed the public land holdings of any State Government department or agency.

174. In its earlier interim reports, the Committee noted it had written to 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.

175. Despite a number of requests, the Government refused to provide the data, stating the request was outside the Committee’s terms of reference. The Government could show no evidence that any form of data base of public land exists.

176. In its second interim report, the Committee noted 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.

177. In 1993, the Minister for Finance announced that the Government Land Monitor would hold a ‘publicly available record of all private treaty sales of Crown Land’. According to the Government’s written submission, this register continues to contain information provided to the Government by the Department of Treasury and Finance and the Department of Sustainability and Environment. However, Government policy provides that all public land must be sold by public auction, tender or other public process unless exceptional circumstances apply. It would therefore seem plausible that the majority of sales are via public process.

178. It seems inconsistent then, that while a record of sales by private treaty is available through the Government Land Monitor, the Committee was unable to obtain data from any Government department relating to the sale, transfer or development of public land in general.

179. The Committee notes that although maintaining a bulletin of government land sales appears as a key responsibility of the GLM in the government’s Policy and Instructions, use of the bulletin is not mandatory, nor is it publicly available. According to the Land Monitor’s office, the bulletin is actually a

45 DTF, above n 35, p 15.
46 Upon request only from the Land Monitoring Office.
'noticeboard' accessed and used only on a voluntary basis by government departments and agencies wishing to advertise or give notice of a parcel of land surplus to their requirements. An interested department or agency may then wish to enter into negotiations for purchase of the parcel. At the time of writing, there were four bulletin listings. It would seem this practice is not in line with the original spirit of the GLM guidelines, nor does it cater to the significant public interest in what happens to such land.

180. The Committee notes the existence of a ‘Register of Surplus Public Sector Land’ in the United Kingdom. The web-based Register ‘provides a single reference point for all participating public sector organisations on the available national supply of surplus land, and helps to ensure that wider government objectives, including housing needs and regional economic and housing strategies, are factored into land disposal decisions’\textsuperscript{47}.

181. The evidence put to the Committee suggests that a register would go some way in alleviating concerns about the lack of transparency and accountability in public land dealings, and would assist Government and the community to see where public land assets are located and where they are needed on a local, regional and state-wide level.

**RECOMMENDATION 2.6**

That the Government revise and update the responsibilities of the Government Land Monitor to include the establishment and maintenance of a comprehensive, publicly accessible database of all Crown land sales and transfers between Government departments/agencies and other public bodies including local Government by both public and private processes, subject to privacy constraints.

The database should include specific details on transaction amounts and parties involved, subject to privacy constraints and should form the basis of a publicly available report and be included with the Department of Treasury and Finance’s consolidated annual report.

**RECOMMENDATION 2.7**

That a Register of Surplus Public Land be established to facilitate greater coordination, accountability and transparency in public land management and to provide for a more strategic use of surplus land.

\textsuperscript{47} http://www.englishpartnerships.co.uk/rspsl.htm
2.4.2 Sale and Transfer of Land to Local Government

182. The Committee received a large number of submissions from local government on the process whereby State Government sells land to local councils. The two main concerns highlighted in submissions related to the practice of councils purchasing Government land at full market value, and insufficient time for councils to consider an offer to acquire land.

183. Inter-governmental transfers of land from State departments to local councils and the practice of charging full market value to councils purchasing public land were the subject of significant comment throughout the Inquiry. Evidence from local government recommended that land be transferred at minimum or no cost to the relevant council. Some submissions suggested that, at the very least, the contribution of the council in terms of improvement and ongoing maintenance be recognised in the valuation assessment.

184. Moira Shire Council believed the policy of charging full market value ‘missed the point that the public land [would] remain public land’ 48. One council argued there ‘is really no reason for public funds to be spent in the transfer of the land from one tier of government to the other’, and that funds that would otherwise be required for the purchase of a site could be better used in improving and maintaining the site for community benefit 49. Councils believe the process fails to recognise and take advantage of the unique relationship between state and local government.

185. The submission on behalf of Nillumbik Shire Council offered a case study for Committee consideration:

Council has been negotiating for several years to acquire part of the former Diamond Valley Secondary College site in Hurstbridge. The school closed in the late 1990s and Council wishes to acquire 80 per cent of the site that accommodates sporting ovals, the frontage to Diamond Creek, an indoor basketball stadium, and a community building. Council also wishes the balance of the land be developed for an aged care facility to meet community needs identified through a consultation process. The relevant government agencies (Department of Education and training, Valuer-General, Government Land Monitor) have offered the land to Council at a valuation based on a hypothetical residential subdivision of the land. Council does not wish to undertake such a hypothetical subdivision, but merely wishes to preserve the community’s long-established use of these assets (some of which were

48 See Moira Shire Council, Submission No 13.
49 City of Moonee Valley, Transcript of Evidence, 28 November 2007.
established through community fundraising). Council considers that a fairer means of valuation would take account of the proposed use of the facilities, rather than a highest-and-best use price.50

186. In line with the view noted above, La Trobe City Council pointed out that changing the policy to allow transfer of land at minimal or no cost could also serve to alleviate financial pressure on the State Government. They explained:

For example, land sold to a sporting club at a minimal price may allow more of club fund funds to be spent on developing a new community facility. The reliance on grant funding to develop the facility could be significantly reduced. Similar benefits may be achieved for conservation/sustainability programs where if land is gifted, a group or council’s funds can be applied to the actual resources (eg. trees, fencing) that will improve the local environment.51

187. The Committee notes that in contrast to the latitude afforded the State Government regarding the sale of land, local councils are subject to more stringent legislative and policy frameworks.

188. Section 189 of the *Local Government Act 1989* imposes restrictions on a Council’s ability to sell and lease land. The Act obliges Council to undertake public consultation before any council land is sold, transferred or exchanged, giving public notice of the intention to sell at least four weeks in advance. Any member of the community is afforded the right to make a submission. Several Councils advised the Committee that local government provisions for accountability, transparency and community input in managing and dispose of public land were adequate. The Interface Councils commented that greater consistency between restrictions placed on councils and those applicable to State Government departments and agencies would be beneficial.52

189. The restrictions on Councils noted above however, do not apply to a transfer, exchange or lease to the Crown, a Minister, a public body or any trustee appointed under any Act to be held on trust for public or municipal purposes.53 The MAV described this as an example of an ‘enabling’ piece of legislation that facilitated the efficient return of surplus land to the State. The

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50  Nillumbik, above n 31, p 5.
51   Latrobe, above n 43.
53  *Local Government Act 1989* (Vic), s 191 (1)(a-d).
MAV, and several councils, suggested it could be used as a model for a reciprocal state-to-council land transfer process.54

190. Currently there are inconsistencies between legislative requirements on councils and State Government in the disposal of surplus Crown land.

**RECOMMENDATION 2.8**

That a system for the reciprocal transfer of land declared surplus between different levels of government be investigated. This could include longer term lease arrangements or direct transfer.

191. Most submissions also recognised that charging full market value for a parcel that will be developed for a commercial purpose or for any purpose that does not represent an ongoing community benefit, is reasonable. This was reflected in MAV’s recommendation that ‘in instances where land has been transferred between levels of government at no cost or reduced cost and the responsible government makes a decision, in the future, to develop that land, it is reasonable that any windfall profits from the increase in land value associated with that development be shared between the council and State Government’, as long as the purpose is not in conflict with public land values.55

192. In valuing land for sale or transfer from a State government agency to a local council, the issue of recognising costs incurred by that council and local community in managing the land was raised by several submitters. The Municipal Association of Victoria pointed out that ‘in some cases, councils find themselves in a situation where they are being offered for sale land they have maintained for many years at no charge to the government entity that is disposing of the land’.56

193. La Trobe City Council observed that community groups and councils are often responsible for maintaining and improving public land lots, within or without formal lease agreements. These improvements may be reflected in a higher valuation during the sale process; a valuation that under current policy makes council or community purchase of the land even more prohibitive. They submitted that contributions to the value of the parcel should be taken into

55 Municipal Association of Victoria, *Submission No 100*, p 10.
account, and called for an appropriate mechanism to recognise the effort and a commensurate reduction in the offer price for the sale of the land to the relevant group or council.57

194. Equally, the ongoing costs of managing public land and open space are a significant issue for Councils, both in considering the purchase of a parcel in the first instance, and in the viability of retaining a parcel as a community asset under council ownership into the future.

195. For example, the Koonung Creek Linear park was created by VicRoads as part of the Eastern Freeway Extension for use as a regional recreational facility. The land was transferred by VicRoads to Manningham City Council in 2005 via a nil cost exchange. However, the ongoing costs of managing this facility are borne by Council.

RECOMMENDATION 2.9
That the practice of the State Government selling land to local government at the full market value be reviewed.

RECOMMENDATION 2.10
That where land is transferred from a State department or agency to local government, past contributions in maintenance and upgrade should be considered by the State Government in determining the amount local government is required to pay.

RECOMMENDATION 2.11
That any ongoing costs to a council of maintaining a site which has been sold or transferred to local government as a community asset should also be acknowledged and State Government financial assistance be considered, especially if the site is of regional or state significance.

196. Several local councils submitted that the lead time permitted them by State departments in offering a parcel for sale or transfer is inadequate. The requirement that all offers of sale be accepted or rejected within 30 days was seen as insufficient time to undertake community consultation and assess whether the land on offer should remain in public ownership. Indeed the Committee notes that many Council meetings only occur once a month. The MAV submitted that

57 Latrobe, above n 43, p 4.
There is little regard to the lead time necessary for councils to: undertake their own investigations in relation to the asset and its existing condition; assess the community benefit that will be derived from the purchase of the asset; and go through a formal reporting process through a council meeting cycle before a decision to pursue purchase can be made.

Councils should be provided with early notice of the State Government’s intention to sell public land or open space.

In the Victorian Guide to Regulation (4.22 Victorian Guide to Regulation, February 2005), the statutory period for submissions is 28 days, however government policy is allow 60 days, recognising that more time is often required to enable informed input by affected stakeholders.

A similar minimum period of 60 days to accept or reject a land sale offer should be provided to council to enable them to make an informed decision about a complex property matter.58

197. The Committee supports the MAV’s recommendation in the belief that sufficient allowing time for adequate community and stakeholder input and due local process is critical to a more strategic and coordinated approach to public land management and disposal.

**RECOMMENDATION 2.12**

That local councils be provided with early notice of the intention of a State Government department or agency to sell Crown land and be permitted a minimum of 60 days to consider, accept or reject a land sale offer. Extensions of time should be allowed where circumstances require.

**2.4.3 Lack of Co-ordination**

198. Evidence received by the Committee highlights the need for a more integrated and long-term approach to the use of public land and greater clarity of responsibility. Evidence indicated that the State Government’s asset disposal process was characterised by an ‘ad-hoc’,59 ‘incremental site-by-site’ approach.60 Prof Catherin Bull, the Elisabeth Murdoch Professor of Landscape Architecture at the University of Melbourne, described current public land management, including development and disposal, as fragmented: Prof Bull argued the ‘current fragmentation of investigation,
decision making, dispute resolution and delivery is not achieving what is necessary at the rate or scale it should\textsuperscript{61}.

199. Findings indicate the dispersal of public land management and processes across departments and agencies undertaking isolated processes has sometimes resulted in uncoordinated and unstrategic use of land and open space assets; and that the fragmentation of processes leads to concerns over lack of accountability and transparency.

200. The Committee was advised by numerous witnesses, ranging from members of the Melbourne 2030 Audit Expert Group (AEG) to individual councils, that a centralised agency to coordinate and oversee the management and sale of public land could ameliorate some of the weaknesses of current policy and processes.

201. Specifically, AEG member Mr David Whitney, commented that ‘there did not seem to be any coordination between the various possessors of surplus public land with a view to formulating strategy as to how its disposal can be effected to produce the greatest community gain’.\textsuperscript{62}

202. Mr Michael Wright, also representing the AEG argued there is a ‘strong case for some sort of centralised coordinating authority, so that when a particular department found land surplus to its requirements, rather than simply doing its own thing in terms of selling it off, it would advise this central agency that the land was available so that that central agency would then be in a position to see what land was available from a number of departments and make a decision as to how that land could be best utilised’.\textsuperscript{63}

203. Evidence to the Inquiry from the City of Stonnington with regard to the sale of Stonnington Mansion into private hands is illustrative of an opportunity lost through the absence of a central authority with a coordinating role and wider purview. The City of Stonnington put to the Committee a solution that he proposed prior to the sale of the historic, heritage listed Mansion by Deakin University in 2006, to which the mansion had been gifted and then sold by the former Kirner and Kennett governments respectively. Of particular note were

\textsuperscript{61} Professor Catherin Bull, Public Hearing Written Statement, p 2.
\textsuperscript{62} AEG, above n 42.
\textsuperscript{63} AEG, above n 42.
the three hectares of land on the estate zoned Public Use in the Stonnington Planning Scheme. That land has now been lost to the public forever.

204. Stonnington’s submission relates that ‘Council and the community made numerous efforts to acquire and retain public access to the mansion and gardens without any Victorian Government support on the matter’\(^64\). A recent review of Council’s Open Space Strategy identified a significant deficit of open space within 500m of the area.\(^65\)

205. In verbal evidence to the Committee, Stonnington C.E.O. Mr Sides testified that:

I actually did propose a solution which might have worked on an intergovernmental basis. It was an example really of why you need this central mechanism and this register and some sort of clearinghouse system for government land. … Tasma Terrace, just across here, which the National Trust is a sitting tenant in, badly needs repair and it is worth quite a few million dollars. It may have been of use to government, it may have been sold commercially. It is not a building under risk at all; it is always going to add to the public realm in its appearance.

My suggestion was that maybe the state government could have financed its component, we would have paid a component, the federal would have paid a component, we were happy to subdivide even a bit off the back of Stonington and the National Trust could have exited Tasma Terrace and that money been used as the state government’s contribution towards buying Deakin out and then we would have had a National Trust headquarters at Stonnington and a park, which we would have paid for and maintained. The Commonwealth was prepared to put in a bit, and also if we needed any more funds there was a strip of subdivision along the back. That just became too hard, because there is nobody who puts those sorts of deals together, except cabinet, really, I suppose.\(^66\)

206. This is one of many examples heard throughout the Inquiry where opportunities for preserving, maintaining and even adding to the public land and open space estate have been lost; and clearly illustrates the need for a single, coordinating authority. The Stonnington example also highlights the need for better coordination and a memorandum across the three tiers of government, to include Commonwealth departments.

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\(^64\) City of Stonnington, Submission No 71, p 2.
\(^65\) Ibid.
\(^66\) Stonnington, above n 26, p 208.
Although the majority of evidence submitted to the Committee related to State and local government processes for land management and sale, a number provided examples of land under Commonwealth control that had been used extensively by the public, and under local management, only to be sold with little or no consultation. Examples include

- the sale of Chicquita Park,\(^\text{67}\)
- the proposed commercial development of the Kingston Municipal Golf Course following the sale of the 50 plus 49 year lease by the Federal Airports Corporation to a developer,\(^\text{68}\)
- the land known as the North Maribyrnong Defence site, covering almost 130 hectares and ceded at no cost to the Commonwealth Government in 1908 by the Victorian State Government. Its sale by the Department of Defence to VicUrban is currently being negotiated.\(^\text{69}\)

In line with AEG recommendations above, Prof Catherin Bull advised consideration should be given to making ‘a specific unit or division in Government’ responsible for the management of public land and open space, ‘to drive programs with identified deliverables over 5, 10 years, etc.’\(^\text{70}\)

Prof Bull envisioned a government body or agency with a specific charter to ‘drive delivery and manage the processes necessary to achieve strategic and local outcomes for public lands and open space’. Its ambit would include:

- managing strategic development and delivery;
- coordinating local inputs within the strategic framework;
- assessing land and water capability and suitability;
- resolving disputes between stakeholders;
- developing conservation and restoration programs;
- identifying development and management programs and projects;
- liaising with stakeholders about long term management; and
- funding, negotiating and delivering programs where appropriate, with the assistance of local councils and Parks Victoria, rather than relying on them for delivery to the present degree.

\(^{67}\) Cr Rosemary West, Submission No 134, p 2.
\(^{68}\) Ibid.
\(^{69}\) Friends of the Maribyrnong Valley Inc., Submission No 37, p 1-2.
\(^{70}\) Professor Catherin Bull, Transcript of Evidence, 30 January 2008, p 4.
210. Prof Bull suggested the body should be independently answerable to
government through its own board, and be funded on the basis of delivery of
both its strategic and local outcomes.71

211. La Trobe City Council recommended that a ‘forward plan’ for fifteen to twenty
years in relation to potential sales and development of State Government
owned or controlled public land would be beneficial. It suggested such a plan
identify land that should be excluded from sale for 50 years, thereby
‘quarantining’ public land from budgetary or political exigencies and
guaranteeing a minimum level of land for the community into the future.

212. This Inquiry has clearly identified a need for a more strategic approach
between State Government departments, local governments and other public
land managers to meet the objectives of multiple policies, rather than
individual agencies undertaking different and isolated processes.

FINDING 2.7
The management and disposal of public land suffers from an insufficient
level of coordination across government departments and agencies and
the three tiers of government resulting in lost opportunities and
suboptimal outcomes for public land and open space sites.

RECOMMENDATION 2.13
That the Government develop mechanisms to facilitate a more strategic
and coordinated approach to the management of public land including:

- a memorandum between the three tiers of government and other key
  public land managers;
- a long-term plan for public land and public open space;
- a central agency or department to coordinate public land and open
  space policy and management; and
- the establishment of an independent advisory board.

2.4.4 Lack of Transparency and Accountability
213. A number of submissions to the Inquiry noted that the Government Land
Monitor’s mandate is to ‘provide best results for government’. It was

71 Bull, above n 60, p 2.
understood that the ‘best results for government’ do not always equate to best results for the community, and suggested that there be an equivalent, independent body to ensure the public land estate is managed in line with, and to the maximum benefit of, the public interest.

214. Prof. Catherin Bull attested that ‘having independent appeals mechanisms in place to handle complex and sensitive cases (mechanisms such as planning panels, specialist tribunals that can act across jurisdictions and are empowered by statutory scaffolding) has become increasingly necessary to protect the public interest and in the interests of transparent and accountable processes’. 72

215. Several submissions to the Inquiry identified a need for an independent review mechanism and raised concern over potential or perceived corruption in the sale of land process. For example, the submission from Save Our Suburbs reflected concern about the ‘the influence of corruption in the sale of public land, including the secrecy and lack of transparency of the selling process and the relationship between the seller and buyer’, and ‘the lack of a public agency such as a Corruption Commission for members of the public to turn to for assistance when they do suspect corruption’. 73

216. Evidence received by the Committee in submissions and hearings supports the need for the establishment of an independent anti-corruption commission. Such a mechanism would improve public confidence in the public land management and disposal processes. In particular, the Committee notes the evidence below from the Kew Cottages Coalition:

If that is the sort of people we are doing business with here in Victoria, I suggest someone has to have a bit of a closer look, because some of those people are being brought to account in other states that have got stronger regulatory bodies than we have. In Western Australia, in Queensland, in New South Wales they have anticorruption commissions. I suggest that this state would not have allowed that sort of thing to happen if we had that type of regulatory body. 74

72 Ibid.
73 Save Our Suburbs, Submission No 131, p 3.
74 Kew Cottages Coalition, Minutes of Evidence, 26 September 2007, p 44.
FINDING 2.8
That although there are strong mechanisms to ensure best commercial results for governments in land transactions, systems to ensure that public land values are protected are much weaker.

RECOMMENDATION 2.14
That the Government establish an independent commission against corruption in Victoria.

2.4.5 Related policy in New South Wales

*NSW Public Lands Protection Bill 2004*

217. The Committee notes that in 2004 a private members bill for the protection of public lands in NSW was defeated by the NSW Labor Government. The objects of the Bill were set to constitute a Public Land Protection Trust, establish a register of significant public land, ensure that significant public land remains in public ownership with public access, that use of the land remains consistent with its significance, and to ensure that government school sites remain in public ownership for a minimum set period with a proportion dedicated to public open space upon future disposal.75

218. The Bill provided that any person, body or organisation could submit a written proposal that an area of public land be included in the register. That proposal would be considered by the Minister and Trust, and must include any recommendations for proposed key purposes for which the land may be used. Although permitted to amend the register, the Minister was to be bound to consider any recommendation by the Trust, and required to publish reasons if the Minister did not follow the relevant recommendations.

219. The Bill would have affected a prohibition on any sale, lease, licence or other alienation, or encumbrance, and restricted development on significant public land.

220. This Bill was referenced by several witnesses, including members of the Protectors of Public Lands and the representative for Save our Suburbs, who suggested a similar concept be adopted in Victoria.

The *Local Government Act 1993 (NSW)* implemented a scheme for the management of public land vested in or under the control of councils. It aimed to clearly identify and classify land to be preserved for the community (community), and land which did not fall within this category and may therefore be sold – ‘operational’ land. Significantly, the legislation explicitly favoured preservation of public land as ‘community’ land: it provided that any land remaining unclassified after 1 July 1994 would be taken to have been classified as community land.\(^{76}\)
CHAPTER 3: Management and Disposal of Public Open Space

222. Public land and open space are an immeasurably precious infrastructure asset that must be protected regardless of contemporary pressures, given the future needs and opportunities that may eventuate.

223. However, it has become increasingly clear that open space, both public and private, is under unprecedented pressure from a trifecta of forces: an increasing demand for land development, increasing population densities, and limited investment of public funds.77

224. The comments below from the Cardinia Ratepayers & Residents Association reflect the growing concerns over the progressive loss of public open space:

Where can kids go after school, to run around and harmlessly let off steam, kick the footy, play cricket with their mates, chuck a ball or do wheelies on their bikes? Where can the kids go without being chauffeured by a parent in a motor vehicle?

With the high density living being encouraged in urban areas, where can adults go for their walk, run, or just to sit on a fair dinkum piece of grass, read a book in the real sunlight without starting their car engines?78

225. As noted in Chapter 1, the value of public open space needs to be viewed across the spectrum of benefits it provides. The Government’s Linking People + Spaces policy states:

Open space is not only for recreation and conservation of environmental and cultural values; it is the foundation of urban liveability. It underpins many social, ecological, and economic benefits that are essential to the healthy functioning of the urban environment.79

226. This Chapter deals with evidence submitted to the Committee relating to the planning, management and disposal of open space specifically. While there is a plethora of policy rhetoric around preserving and protecting public open space, the Committee heard evidence that this does not always translate into

77 Colac Otway Shire, Submission No 56, p 3.
78 Cardinia Ratepayers & Residents Association, Submission No 43, p 13.
effective protection, management and use of this resource, particularly at a local level.

3.1 Legislative and Policy Basis for Open Space Provision

227. The Committee recognises that the management, disposal and development of public land space are not the sole preserve of State and Commonwealth government agencies. In fact, management and control of open space is shared among a diverse range of bodies, enabled under various legislative frameworks, with particular emphasis on local government mechanisms for the provision of metropolitan open space.

228. The main mechanisms for protection of open space include:

- the Subdivision Act 1988
- Melbourne 2030 policy
- Parklands Code
- Local planning schemes
- Local government open space strategies.

Subdivision Act 1988 (Vic)

229. Section 18 of the Subdivision Act (1988) enables Councils to require that a proportion of land subject to subdivision and development for residential, industrial or commercial purposes be set aside as public open space; or to require that the developer pay an equivalent percentage of the total site value as a cash contribution, or an agreed combination of both. The Act specifies these amounts should not exceed 5 per cent.

230. Section 20(2)(a-c) of the Act requires the Council use any payment towards public open space to purchase additional land for public recreation or parklands uses, or to improve existing land for public recreation and use. Section 20(4) also states that public open space can be sold ‘only if the Council has provided for replacement public open space’.

231. Clause 52.01 ‘Public Open Space Contribution and Subdivision’ of the Victoria Planning Provisions translates this to the local planning context.
Melbourne 2030

Chapter 4 deals with Melbourne 2030 policy in detail and notes key directions within the policy to ‘improve the quality and distribution of local open space and ensure long-term protection of public open space’.

The Department for Planning and Community Development advised the Committee that directions within the Melbourne 2030 strategy were intended to promote public open space as ‘a public resource, to protect, to encourage and to coordinate its provision’ and that public open space was seen as a ‘part of an urban environment being balanced with all the other elements of that urban environment’.

Linking People + Spaces Policy - Parklands Code

One initiative to support Melbourne 2030 policy is a commitment to ‘apply the open space planning principles set out in the Parklands Code to guide decision-making on issues of open space protection and management’.

The Parklands Code within the Government’s Linking People + Spaces policy states that any proposed change in land use must be exposed to public scrutiny and that the ‘environmental and recreational value of surplus government land will be fully evaluated before any decision is made on a proposal to sell land held by the Crown, a government department of a statutory authority’.

Local planning schemes

Planning schemes and permits are the key mechanisms for controlling land use and development. However, there is very little enforceable protection for public open space, particularly in the metropolitan area and in regional towns. Evidence put to the Committee strongly indicated a need for greater protection for open space in planning provisions.

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80 Department of Planning and Community Development, Transcript of Evidence, 27 November 2007, p 12.
81 Parks Victoria, above n 78, p 8.
237. The Victoria Planning Provisions offer fairly minimal direction on best practice open space planning and design, and much of this relates to new, ‘greenfields’ development rather than to planning in established inner urban contexts. The ‘Planning Guide for Urban Open Space’ (Ministry for Planning 1989) dates from 1989 but is still used by local councils in assessing the adequacy of open space provision in the absence of current, comprehensive guidelines. In fact, The State Government’s response to the Melbourne 2030 AEG Report commits it to providing clearer guidance in planning schemes for the quantity and quality of open space. A recent report by the Auditor-General also found the State Planning Policy framework did not provide adequate guidance to councils on such issues as Melbourne 2030 implementation, where generalised state-wide strategies need to be converted into targeted directions.\(^{82}\)

238. The Committee was advised by several expert witnesses that open space guidelines and planning provisions for open space should be better integrated into planning frameworks, with measurable targets, objectives and outcomes.

239. The submission from planners Dr Ken Marriott and Ms Cathy Kiss, indicated that important open space resources have been lost, and suggested this has occurred because of a failure to apply sufficiently detailed systems of classification to the many forms and uses of open space. They submitted a series of classifications for the Committee’s consideration:

- **Recreation**: land used for a range of formal, informal, competitive and non-competitive recreation activities

- **Conservation and habitat**: land reserved to protect natural environments, rare and scientifically important natural areas

- **Water management**: land reserved for water storage, to protect catchments or ensure, for example, that water transport and flood flows can be effectively managed

- **Linear and linkage**: land reserved to allow movement of water, people, vehicle, and flora and fauna between different areas

- **Amenity and buffering**: land reserved for use in enhancing urban and rural environments and for providing buffers between conflicting uses

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Heritage: land reserved to protect natural or cultural heritage sites or areas

Extraction: land reserved for vegetable and mineral extraction

Farmland: land allocated to livestock or crop farming

Future residential: land which is presently open space but which has been designated for conversion to urban uses

Infrastructure and services: land reserved and/or used for a range of infrastructure and services, including pipelines, road reserves, port and airports, land under airport flightlines, army bases and schools

Water bodies: land covered by water which does not fall into within the water management category

Committed: land reserved as open space but as yet not committed to a specific mix of uses

Uncommitted: land in the form of open space but which may be subject zoning or allocated to another use.

RECOMMENDATION 3.1
That greater provision for open space be incorporated in state and local planning frameworks and guidelines, with measurable objectives.

3.2 Public Open Space Quotas

240. The Committee notes that neither the planning provisions nor the State Government’s major policy documents specify minimum public open space quotas. Ms Genevieve Overell, on behalf of the Department of Planning and Community Development, confirmed that:

There is not a formula for a minimum provision of public open space in any particular centre. There are certainly policies which encourage the provision of numbers of resources, public open space being one of them, but responding to the particular requirements or, if you like, particularities, the characteristics of those centres, there is not a specific designation of a certain quantum ...

241. However, evidence would suggest that measurements, or at least more specificity as to ideal, or minimum ratios, are possible and could be used as a basis for strengthening State and local planning scheme provisions, and for justifying planning scheme amendments. For example, Bayside City Council’s

HM Leisure Planning Pty Ltd., Submission No 83, p 1.
DPCD, above n 79, p 26-7.
submission to the Inquiry related aspects of its own assessment of open space needs:

The ‘Community Neighbourhood Audit Tool’ indicated that public open space provision should be at a level of three hectares per 1000 residents, including at least one hectare per 1000 residents of local open space. This would indicate that Bayside should have 270 hectares of open space now and 300 hectares by 2030. Current open space provision in Bayside is 200 hectares.85

242. Conversely, planners Dr Marriott and Ms Kiss suggest the approach taken by planners in determining minimum measures of open space has been discredited, and that a more useful approach is to identify the amount of open space needed to support a viable mix of recreation opportunities and to obtain at least that amount. They explained:

It has been recognised that at least 8 tennis courts, two Australian Rules football ovals, 3-4 soccer fields and 2 kilometres of walking and cycling trails are needed to attract sufficient users to generate a viable program of activities... For other open space types and uses, assessing need can be more objective.86

243. Specifying a minimum amount of open space per region, or per capita, or adopting an approach in line with that proposed by Dr Marriott and Ms Kiss, would require a comprehensive understanding of the types, uses and functions of open space, and the development of complementary guidelines. The need for more information about the location, availability and uses of open space emerged as a key theme for the Inquiry. This point is discussed in more detail below.

3.3 Open Space Strategies

244. The ‘Analysis of Progress and Findings from the 2006 Census’ states that:

Local open space planning and provision remains primarily a council responsibility. In the growth areas, Precinct Structure Plans are currently being prepared by councils and the Growth Areas Authority. The Structure Plans will address the provision of open space in growth areas. In established areas the focus will often be on improving existing

85  Bayside, above n 28, p 10.
86  HM Leisure Planners, above n 82, p 3.
open space by carefully targeting acquisition of new land and making better use of government land.87

245. Strategic planning and management of open space may be specifically addressed by local councils by way of individual open space strategies, or form a component of Municipal Strategic Statements or Municipal Public Health Plans. Formulating a municipal open space strategy is not a requirement imposed on local government, although many local councils have, or are in the process of, developing such a strategy.

246. The capacity of individual councils to develop a strategy for local open space is influenced by a number of factors, including differences in resource levels and local priorities. It was also noted that, if developed, strategies may have different statuses and be directed toward a range of purposes: some are strategic land use planning tools, some guide developer contributions, some guide capital expenditure, some are management tools.

247. Open space management and planning is also complicated by the fact that open space may be owned or managed not by only by local councils, but by Committees of Management responsible to the Department of Sustainability and Environment, or Parks Victoria, among others. Linking People + Spaces explains that:

Although Parks Victoria is a key provider of regional parks, the management of metropolitan open space is widely spread and under the direct control of no single body. The region is characterised by a diversity of land tenures and a corresponding range of agencies and community groups that are responsible for managing these tenures under various pieces of legislation.88

248. The Committee heard local councils that had adopted an open space strategy were more likely to be aware of local open space needs, and that these strategies had been used, on occasion, to protect and secure increased developer contributions to open space (see discussion below).

3.4 Regional Collaboration

249. Local councils may be aware of open space and needs within their municipality, but not of those on a regional scale. The ‘Analysis of Progress

88 Parks Victoria, above n 78, p 7.
and Findings from the 2006 Census’ undertaken by the Department of Planning and Community Development as part of the Melbourne 2030 Audit process confirms that ‘quality of information is inconsistent with respect to the availability, usage and distribution of open space in different areas of Melbourne, and the likely future demands given growth and changing demographics’.89 The Committee’s evidence indicated coordination and management of open space on a regional scale, in addition to the work of individual councils on a local level, would be beneficial.

250. The Committee was provided with examples of regional collaboration and management of open space. These included the Inner Melbourne Action Plan (IMAP), an example of a regional approach to Melbourne 2030 implementation with partnerships across inner city councils and Government departments and agencies; the Interface Councils, representing the ring of municipalities around metropolitan Melbourne; and WSROC, a ‘regional governmental cluster’ operating in Western Sydney.90 The Committee notes IMAP’s first two actions on its regional open space strategy are:

- to map the regional open space and trail network, identifying ownership, management responsibility, agreed function and gaps in open space and trails, and to develop an implementation program for the development and extension of the network, detailing location, cost, funding source and timeframe of works; and

- to introduce a developer contribution scheme for open space network improvement.91

251. Urban planning and design experts, Prof. Catherin Bull and Ms Liz Johnstone, of the Municipal Association of Victoria, referenced regional, or cross-jurisdictional collaborations, as models for more effective delivery of open space conservation and management programs.

89 DPCD, above n 86, p 29.
90 Bull, above n 69.
RECOMMENDATION 3.2

That the Government support local councils in developing and achieving local and regional open space strategies. These strategies should consider the local characteristics and needs including population density and appropriate open space provision per capita.

3.5 Activity Centres

252. The Department of Planning and Community Development gave evidence on activity centres planning, which is the process of developing an integrated vision for the desired future development of an activity centre. Structure plans establish a planning and management framework to guide the development and land use change in centres.

253. The Committee is concerned that such activity centres are declared without due regard for open space:

The CHAIR — You pointed earlier to activity districts of the various classifications. Is there any examination of — or system or approach for examination of — public open space within the government’s designated activity districts?

Ms OVERELL — If you are asking is there a policy that seeks to encourage the provision of public open space in activity centres across metropolitan Melbourne, that policy does reside in Melbourne 2030, so indeed that is an existing state government policy. It is administered, generally speaking, by the local councils, which have primary responsibility for decision making in relation to applications for development within metropolitan Melbourne. So the provision of public open space is partly governed by an application of state policy and it partly governed by the particular council’s local policy as reflected in its MSS.

The CHAIR — But the department, as I understand from what you are saying, does not in any way monitor within activity districts the amount of public open space or the addition of public open space or the subtraction, indeed, of public open space?

Ms OVERELL — Not to my knowledge, no.92

254. The Committee notes the 22 activity centres currently identified under Melbourne 2030 will experience intense development and increased population; however there is no consistent or formal open space policy to accommodate this growth.

92 DPCD, above n 79, p 87.
**RECOMMENDATION 3.3**

That the Government work with councils and local communities to review open space provisions in and adjacent to declared activity districts and that further development in these centres take account of open space needs. In particular, formal policies should be mandated for zones where the Government proposes high density or high intensity development.

### 3.6 Sale and development of public open space

#### 3.5.1 Developer open space contributions

255. Clause 52.01 ‘Public open space contribution and subdivision’ of the *Victoria Planning Provisions* (VPP) and Section 18 of the *Subdivision Act 1989* provide opportunity for local councils to acquire a contribution of open space, or equivalent in cash, upon subdivision of a title for commercial purposes.

256. The provisions state this amount should not exceed 5 per cent of the land area or value, however evidence to the Committee suggests this amount can vary significantly depending on the location and scale of the proposed development. It was noted the legal requirement is often cashed out, particularly in established areas with higher rates of infill, as against on green field development sites. This may effectively leave a local community deficient in its public open space requirements. Many submitters further questioned the notion that public open space can be provided elsewhere, when it is required in the direct vicinity of a development.

257. Several submissions raised concerns that monies paid by developers were being absorbed into local councils’ general revenue, with little or no accountability that the funds would be put toward open space.

258. It is the Committee’s understanding however, that the *Subdivision Act 1988* provides that the Council must use any payment toward public open space to purchase new, or improve existing, open space. Nevertheless, the effectiveness of this provision was queried by several witnesses. For instance, Mr Michael Wright, a member of the Melbourne 2030 Audit Expert Group explained that while the *Subdivision Act* imposes a trust on the funds collected under the Act and requires them to be spent on public open space, it does not necessarily translate into purchase of land:

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93 For example, Cardinia Ratepayers & Residents Association, *Submission No 43*, p 5.
’that is as far as it goes. How it actually translates in action just depends on the circumstances. The council can say, “Look, we’ve got all this money, but there’s no land we can buy.”’

259. The Committee notes further that the Subdivision Act is now almost 40 years old and that the availability, use and value of open space have shifted significantly since its inception. Ms Johnstone, on behalf of the Municipal Association of Victoria questioned its ongoing relevance and adequacy as a key instrument for maintaining and providing sufficient levels of open space for a growing population. It was also noted that its effectiveness as an instrument varies depending on whether it is applied to green field and outer urban, as against infill-type developments. Its application in the inner city and inner suburban areas can result in no addition to net open space, or open space that is not well located.

260. Further, concerns were raised that VCAT can overrule the open space contribution required from developers by councils. As noted above, the legislation states this amount should not exceed 5 per cent of the land area or value. However, the Committee heard evidence that appealing to VCAT to reduce the contribution can often be in the developer’s interests, insofar as legal costs may amount to less than would be required as an open space contribution.

261. The Committee was advised that the sole means of securing a minimum set open space contribution is by amending the relevant Planning Scheme. Mr Jeremy Wood, Group Manager, City Development at the City of Moonee Valley, confirmed that ‘if you can put a set amount into the planning scheme – and there are a couple of councils around Melbourne that managed to do that some years ago – it does not become an appealable issue’.

262. Applications to amend a planning scheme require a strong strategic case, and considerable investment from local councils in assessment exercises, public consultation and display, independent reviews and final approval of the Minister for Planning. The Committee recognises the substantial costs to local councils associated with this process.

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94 AEG, above n 42, p 678.
95 MAV, above n 53.
96 City of Moonee Valley, Transcript of Evidence, 28 November 2007, p 4.
263. The Cardinia Ratepayers & Residents Association favoured increasing developers’ contributions as one preferred source of funding for the acquisition of infrastructure, including open space. The Melbourne 2030 Audit Expert Group recommended the State Government provide direct assistance to councils to complement developer contributions in order to acquire open space.97

**RECOMMENDATION 3.4**

That the mechanisms governing developer contributions to open space and cash-in-lieu of open space be urgently examined with a view to ensuring their effectiveness, enforceability and transparency.

**RECOMMENDATION 3.5**

That the mechanisms be strengthened for ensuring developer contributions in cash are directed toward the purchase, maintenance or improvement of open space be strengthened.

### 3.5.2 Sale of council land and open space

264. As part of their open space strategies, some councils gave evidence that surplus council-owned land was sold to fund the purchase, maintenance or development of more strategic open spaces.

265. For example, over the past 17 years, Manningham’s Open Space Strategies have endorsed the sale of Council owned land with minimal open space value under Section 189 of the Local Government Act. These sales have funded the purchase and/or development of more strategic open space and some capital development works within parks.

266. However, some community witnesses expressed concern that funds were not always reinvested in open space. The Green Wedges Coalition contended that land could be ‘sold off by Councils to raise funds for other municipal purposes as well as by the State and Commonwealth Government’.98

### 3.5.3 Replacing open space

267. Manningham Council’s Open Space Strategy dictates that where open space is sold or alienated for private development, replacement public land of the same area, at a minimum, must be provided. Both the Victoria Planning

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98 Green Wedges Coalition, *Submission No 135*, p 5.
Provisions and *Subdivision Act* require that open space be protected by ensuring that where open space is subject to a change in land use, replacement open space of equal or greater size and quality is provided.

268. Based on evidence put to the Committee throughout the Inquiry however, it is not clear whether this is occurring. Further, the Committee was not made aware of how or if this provision applies to the sale and development of public open space by State departments or agencies.

269. While the *Subdivision Act* imposes a trust on cash contributed by developers toward open space, the Committee was not made aware of an equivalent mechanism for ensuring that revenue from the sale of open space at the local or State government level be tagged solely for replacing or improving open space assets.

270. This weakness was the subject of significant concern in submissions. The City of Dandenong submitted that ‘a process should be developed which ensures that any funds generated from the sale of public open space are used to acquire the immediate replacement of equivalent open space’.99 Further to this, Cr Rosemary West, Kingston City Council proposed that if additional open space is not required within a particular vicinity, ‘sale proceeds should go into an open space fund for the purchase of open space in areas that are in need of it’.100

**FINDING 3.1**

Community concerns expressed in evidence to the Committee indicate that the Victorian Planning Provisions and the Subdivision Act 1989 are not operating effectively to protect public open space.

271. While the State Government has directed substantial funds through its Metropolitan Parkland Acquisition Program toward the purchase of properties to add to regional parks,101 the Municipal Association of Victoria suggests consideration should be given to funding models that provide ongoing financial support to councils to assist in assembling land to implement state policy such as *Melbourne 2030*.

99  City of Greater Dandenong, Submission No 101, pp 2-3.
100  West, above n 66, p 3.
272. Stonnington Council’s submission to the Inquiry offers examples of the high cost and complexity of securing relatively small amounts of land essential for public open space in key strategic locations in the City of Stonnington. The Committee notes the State Government has previously administered a fund, through the Melbourne Parks and Waterways Grants Program, to assist local councils in purchasing private land for open space and Green Wedge uses. The submission from Manningham City Council favoured its reintroduction.

RECOMMENDATION 3.6

That the Government examine funding mechanisms for the acquisition of strategic land and open space, and the retention of local pocket parks by local government.

3.7 Need for a Comprehensive Audit of Public Open Space

273. This Inquiry identified a clear need for more accurate and detailed information on existing public open space. Numerous witnesses observed that a comprehensive audit of both public land in general and open space in particular would provide an improved basis for enhanced strategic planning and management of these resources. Ensuring public open space data is publicly available should be considered as a means of improving current community perceptions of a lack of accountability and transparency.

274. Prof Catherin Bull advised an audit should cover not just location and size, but the land quality, value and capacity. Prof Bull said ‘strategic-level thinking needs to meet knowledge of the actual site and land itself. The driving of an urban pattern in terms of logic should meet real understanding of the land capacity and capability’.103

275. Ms G. Overell of the Department for Planning and Community Development advised she was ‘not aware of an audit of public open space being undertaken during my term in this role… [u]sually I think it is an exercise undertaken at the local level’.104 As noted above, the ‘Analysis of Progress and Findings from the 2006 Census’ found that ‘quality of information is inconsistent with respect to the availability, usage and distribution of open space’.105 Mr David Whitney, of the Audit Expert Group found similarly, that

102 Manningham City Council, Submission No 17, p 3.
103 Bull, above n 69, p 178.
104 DPCD, above n 79, p 12.
105 DPCD, above n 86, p 29.
'there is no overall audit, to our knowledge or we heard about, that says what amounts of open space are there at present and what may be required in the future'.

276. Planners Dr Marriott and Ms Kiss submitted that:

> It would appear that little attempt has been made to classify or inventory open space on a municipal, regional, State or national basis. While Crown reserves have been given a lot of attention in the past, it is only in very recent years than any allocation of uses has occurred, and even then it is rarely in [sufficient] detail... This situation has led to the unwitting loss of important space resources over many years, simply because their most important values have never been identified or subsequently protected.

277. Prof Bull advised the Committee that ‘detailed reviews of land capacity and value within designated open space zones are needed at progressively more detailed scales in order that strategic level planning is feasible and achievable on the ground.’

278. An example cited by Cr Rosemary West from Kingston City Council is illustrative:

> In Patterson River Ward, Council is proposing to sell a small but well-situated park at 10 Tradewinds Lane to raise funds for an extension to a community centre. Council claims this is not public open space, but is classified as a drainage reserve and was contributed by the developer to Council. Yet this land has two clumps that appear to be remnant vegetation, a seat and a gravel path: it looks like – and appear to be used as – a park. It is bordered by the Eel Race on one side and a path to a nearby reserve on the other. It would seem to be a suitable picnic spot for visitors to the Eel Race, far enough back from the water for children to be safe. This illustrates the need for an audit of public open space in each municipality, which should be related to use or potential use and not necessarily the zoning or other classification.'

279. An audit would represent an initial step in more strategic involvement on behalf of the State Government in providing adequate open space to service the increased residential densities of Melbourne 2030. Manningham Council, among several, advocated that:

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106  AEG, above n 42, p 669.
107  HM Leisure Planning, above n 82, p 2.
108  Bull, above n 60.
109  West, above n 66, p 3.
as a broader principle the State Government should become involved in the challenge of providing adequate open space ….. through a strategic assessment of its land holdings, and where appropriate retain that land as open space.\textsuperscript{110}

280. An open space audit would ascertain:

- existing open space in terms of location and quality;
- current types and levels of open space usage;
- potential open space; and
- a means to anticipate open space needs of the future.

281. Notably, Mr David Whitney, of the Melbourne 2030 Audit Expert Group cautioned that:

unless some overall audit is done and one can anticipate what the open space needs of the community are, then decisions, which might be expedient for a local council to shave off a corner of the park, should be resisted.\textsuperscript{111}

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\textbf{RECOMMENDATION 3.7} \\
That a comprehensive audit of public open space in the areas covered by Melbourne 2030 be undertaken. \\
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\textbf{RECOMMENDATION 3.8} \\
That any sale and alienation of open space be minimised until an audit is undertaken. \\
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\textbf{RECOMMENDATION 3.9} \\
That retention of public land in the public estate be adopted as the default position, unless it can be shown by a process that the land in question has insufficient public value according to updated criteria. \\
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\textbf{RECOMMENDATION 3.10} \\
That the Government investigate mechanisms to ensure public open space in metropolitan and regional centres be afforded greater legislative protection similar to that afforded to other land of State significance. \\
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\textsuperscript{110} Manningham, above n 101, p 3. \\
\textsuperscript{111} AEG, above n 42, p 680.
CHAPTER 4: Melbourne 2030 and Green Wedges policy

282. The Committee’s terms of reference require it to examine the relationship between the sale and development of public land and open space, and the Government’s Melbourne 2030 and Green Wedges. Both policies are fundamental to the Government's land use and strategic planning frameworks and for the present and future liveability of Melbourne. Melbourne 2030 contains numerous directives for open space planning, provision and development, both general and specific. Melbourne 2030 also seeks to give effect to the protection and management of Green Wedges.

283. During the course of the Inquiry, the State Government established an Audit Expert Group (AEG) to comment on the ongoing implementation of Melbourne 2030. The Group presented its first report in March 2008 which was followed by a Government response.

284. This Chapter sets out the Melbourne 2030 initiatives that relate to the Committee’s terms of reference, surveys the relevant findings of the Melbourne 2030 Audit Expert Group and the State Government’s response to that Report; and finally, highlights evidence received that dealt specifically with aspects of Melbourne 2030 and/or Green Wedges policies.

285. Because of the broad scope of Melbourne 2030, submissions and recommendations that reference the strategy in a general sense have been incorporated throughout the entirety of this report. Further reference to the impact of Melbourne 2030 initiatives are evident in Chapter 5 case studies such as the Camberwell Railway Station development.

4.1 Melbourne 2030

286. *Melbourne 2030 - planning for sustainable growth* (*Melbourne 2030*) is the State’s most recent and arguably most significant strategic planning policy document. It contributes to the ten goals of Victoria’s highest-level policy, *Growing Victoria Together*, and relates in turn to a range of strategies and initiatives developed by the Government.

287. Released by the Department of Infrastructure and Department of Sustainability and Environment in October 2002, *Melbourne 2030* is a plan for
the development and growth of the Melbourne and greater metropolitan area over the next 30 years. Envisioned through a set of principles and nine key directions, and supported by corresponding policy initiatives, the plan posits a long-term overview of the directions Melbourne is expected to take, with the central objective of protecting and ensuring Melbourne’s ‘liveability’ and sustainability.

288. The vision statement for the strategic framework asserts that ‘[i]n the next 30 years, Melbourne will grow by up to one million people and will consolidate its reputation as one of the most liveable, attractive and prosperous areas in the world for residents, business and visitors’. More recent data has confirmed the likelihood of reaching the population target up to ten years sooner. Population and environment pressures are the critical drivers of change.

289. The Office of Planning, Heritage and Urban Design within the Department of Planning and Community Development (DPCD) is responsible for the implementation of Melbourne 2030, including the Green Wedge Management Project. While principal responsibility for the strategy lies with DPCD, Melbourne 2030 is intended for use by a range of organisations:

It will guide government agencies in matters such as infrastructure investment, the location of facilities, land-use planning and policy decisions. It will give municipal councils a clear regional context within which to plan and manage local needs, and it will inform communities and individuals about the types of change they might see in their part of metropolitan Melbourne and the surrounding region.

290. The Committee considers the following Melbourne 2030 key policy directions and initiatives relate specifically to its terms of reference:

291. In relation to the sale and development of public land, the Committee notes that Direction 6, for ‘a fairer city’, includes a commitment to ‘change the policy that governs the disposal of government land and buildings to reflect the best use rather than the highest price achievable, and base the policy on new socially responsible criteria’ (6.1.7).

292. Evidence put to the Committee and findings referred to elsewhere in this report, notably in Chapters 2 and 5, suggest this commitment has not yet been met. The Committee was presented with numerous examples of the

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sale and development of public land sites that did not involve adequate processes for determining ‘best use’; aimed at maximising financial return with little apparent concern for other criteria; and were pursued, in many cases, despite considerable local objection.

293. In relation to open space, the Committee notes that Policy 5.6 of Direction 5 ‘A great place to be’, aims to ‘improve the quality and distribution of local open space and ensure long term protection of public open space’ by through the following initiatives:

5.6.1 Reviewing mechanisms for strategic open space planning in consultation with open space management agencies in light of the Park Victoria strategy *Linking People and Spaces*

5.6.2 Applying the open space planning principles set out in the *Parklands Code* to guide decision-making on issues such as open space protection and management

5.6.3 Establishing a planning framework and guidelines relating to open space and sporting facilities at local and district level

5.6.4 Helping local government to improve the quality and distribution of local open space by:

- researching changing community attitudes and usage patterns
- providing advice on innovative park design
- identifying opportunities to improve provision in areas identified as deficient
- developing strategies to maximise the open space and conservation potential of neglected or under-used areas such as some railway land, cemeteries and school.

294. There is little evidence that these initiatives are actually occurring. Evidence put to the Committee throughout the Inquiry indicates that the policy directions of protecting public open space are not being met to the satisfaction of local communities.

295. Policy 5.7 aims to ‘rectify gaps in the network of metropolitan open space by creating new parks and ensuring open space corridors are protected and enhanced’. Initiatives under this policy related to specific areas, trails and parks tagged for further improvement.
296. In relation to Green Wedges, the Committee notes the relevance to its Inquiry of Policy 2.4 ‘to protect the Green Wedges of metropolitan Melbourne from inappropriate development’. Supporting initiatives include implementing new and amending existing planning scheme provisions, working with local councils to support the consolidation of new residential development into existing settlements in Green Wedge zones, and legislating to protect area of high environmental and scenic values.

297. As better community engagement in public land planning and management decisions has emerged as a key theme for the Inquiry, the Committee highlights the Melbourne 2030 Direction 9 for ‘Better planning decisions, careful management’ that incorporates policies directed toward achieving better planning decisions, developing stronger partnerships and greater community involvement.

4.2 Melbourne 2030 Audit

298. As part of Melbourne 2030, the State Government committed to five yearly reviews by a two-stage process, involving, firstly, feedback and consultation from local government, key stakeholders and community; and secondly, a considered report by an independent Audit Expert Group (AEG). The group, chaired by Prof. Rob Moodie of Melbourne University and comprising three other experts, was established in July 2007 and presented its first report providing advice on strategic and ongoing implementation issues in March 2008.

4.2.1 First Report of Audit Expert Group

299. The report found that while there was generally strong support for the fundamental principles of Melbourne 2030, there was also a significant level of criticism of the plan and its implementation so far. The Committee notes that both the general and specific advice of the AEG Report is consistent with the wider evidence and findings of this Inquiry. It also notes the absence of data and lack of good monitoring that inhibited the Audit has similarly affected the scope of the Committee’s investigations.\footnote{AEG, above n 42, p 681.}
300. Broadly, the Melbourne 2030 Audit set out three core, inter-related imperatives it defined as crucial to the successful implementation of Melbourne 2030 and which it believes are not occurring:

- ensuring clarity of responsibility and commitment to the strategy across all levels of government. Allocation of responsibility and visible leadership is essential to effective and full implementation of the strategy
- allocating adequate resources, with agencies required to revise their budget processes to align resources for Melbourne 2030 initiatives
- generating broad-based support and partnerships with all stakeholders, particularly local government and local communities.

301. The recommendations of the AEG Report that relate to public land and open space are outlined below, while their comments regarding Green Wedges are at provided in section 4.4.

**Public land**

302. The AEG Report highlighted dispersed authority as a hindrance to coordinated, effective metropolitan planning, decision-making and service delivery. State departments and agencies with responsibility in these areas include the Department of Planning and Community Development, the Growth Areas Authority, VCAT, VicUrban, VicRoads, VicTrack, the Department of Treasury and Finance, the Department of Infrastructure and the Department of Human Services, among others.

303. The Report makes a clear recommendation that '[d]isposal of land should occur on terms that produce the greatest overall community benefit' and calls for substantially greater and more meaningful community engagement. It observes that

> When a State Government asset becomes available for sale, it is not surprising that the department or agency responsible aims to get the highest possible financial return. This may not, however, be the best outcome for the community and may in fact lead to considerable community anger and disappointment, such as when a school is sold and open space is lost. This disposal of State assets should ensure that overall benefits, including social and community value, are taken into account – not just the financial return.

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304. This advice is in line with recommendations X and X of this Inquiry detailed in Chapter 2.

Open Space

305. The AEG Report highlights improved open space provision as one of the key measures for enhancing liveability and sustainability. Specifically, it recommended that in the process of selecting the Activity Centres for development proposed by Melbourne 2030, the list of criteria should include consideration of the Centre’s ‘capacity to provide for appropriate levels of social infrastructure and services, public open space and high-quality urban design’.117

306. In terms of Melbourne 2030’s underlying principle of sustainability, the AEG Report stated that ‘reduction of tree canopy and loss of open space are two of the most easily felt and resented potential (but not inevitable) outcomes of urban consolidation. Both are important for liveability and amenity, as well as mitigation of greenhouse gas emissions’.118

307. It outlined three key areas for consideration in relation to preserving open space:

- **Retaining mature trees**, for example, by improving the design for good retention practice and improving enforcement capability through local governments.

- **Providing offsets for greening and open space provision**, for example by funding greening strategies in areas of Melbourne where trees are scarce, and enhancing streetscapes in areas of higher density housing.

- **Planning and provision of open spaces**, for example by: supporting a central point of government planning for open space provision; providing direct assistance to councils to complement developer contributions in order to acquire open space; inclusion of open space in precinct structure plans in growth areas; and allocation of surplus government land for open space.119

116 Ibid. p 6.
117 Ibid. p 38.
118 Ibid. p 55.
119 Ibid.
308. During the Committee’s public hearing with the Audit Expert Group, discussions took place on the need for public release of the Melbourne 2030 smart growth committees deliberations and findings.

309. In late 2003, the Victorian Government appointed five Melbourne 2030 smart growth committees to oversee the review of the existing growth area plans and to provide advice on the long-term growth in each area. The committees comprised state, local government and industry representatives and carried out technical investigations, conducted public workshops and submitted final reports to the Government.

310. The Committee notes with concern that the minutes, submissions and reports of these smart growth committees have never been publicly released. The Audit Expert Group confirmed they had only viewed the final reports of the committees.

**RECOMMENDATION 4.1**

That the Minister for Planning publicly release all documents pertaining to the Melbourne 2030 smart growth committees, including minutes, agendas and submissions, so that their role and assumptions in the establishment of Melbourne 2030 can be fully assessed.

4.2.2 The Victorian Government response to the Melbourne 2030 Audit

311. The response states that the Government ‘broadly accepts the advice of the AEG’ and that it will take action in four key areas:

- **Planning for all of Melbourne**, under which come, most notably, commitments to ‘establish Development Assessment Committees, in partnership with the local government sector, to make planning decisions in relation to areas and matters of metropolitan significance’, and to ‘engage communities in the planning matters early in the process, including piloting a range of community engagement approaches with the local government sector, to involve communities in planning for growth’.

- **Transport and managing congestion**

- **Environmental sustainability and climate change**, including a commitment to ‘accelerate and extend mapping of important areas of vegetation and habitats in Growth Areas and Green Wedges to avoid, minimise and offset and losses, and integrate planning for biodiversity into precinct structure planning in Growth Areas to provide greater certainty for future development’;
Managing urban growth and change, including a commitment to ‘support councils to plan for future community needs, by developing clear requirements for the amount and diversity of housing needed in each municipality, taking into account the capacity of each area to accommodate growth and the protection of neighbourhood amenity and the character of streets’.

312. The Government response committed it to establishing a new unit, the Melbourne 2030 Implementation Unit under the Planning and Local Government division of the Department of Planning and Community Development to coordinate Melbourne 2030 implementation and to support partnerships with local government.

313. The response recognised an emphasis on increased levels of, and approaches to, community engagement was required; with a commitment to consult local communities early in planning and decision making processes. It also acknowledged that better quality, up-to-date information to assist local communities in understanding issues and giving informed input was necessary.

4.3 Melbourne 2030 Implementation

314. While the intent of Melbourne 2030 was generally well received and reflected in evidence put to the Committee and to the Audit Expert Group, it was also implied that some initiatives, particularly those relating to open space and disposal and use of public land, were not being implemented effectively.

315. Many witnesses acknowledged that increasing urban densities would lead to a corresponding increase in the density of uses of public land and open space, but there was concern that, rather than providing and maintaining sufficient open spaces for a growing population, existing open spaces were under threat from Melbourne 2030 developments.

316. A number of submissions levelled concerns at the delivery of Melbourne 2030, for example Save Our Suburbs argued that ‘while Melbourne 2030 contains rhetoric about public open spaces, in practice the implementation of Melbourne 2030 seems to have resulted in the destruction of public open space, the decrease in amenity of some public open spaces, and higher
density developments that are not required to provide adequate private open space, let alone an appropriate degree of public open space’. ¹²⁰

317. The findings of the AEG and the Committee’s evidence highlights problems with the initial implementation of Melbourne 2030, and difficulty in assessing its success or otherwise due to a lack of specific, measurable data. In its own evidence to the Committee, one member of the AEG stated that ‘it is not unfair to say that all [the Government] had ticked off was more studies and more plans. Things had not actually happened on the ground, so the degree of success it saw, we did not share’. ¹²¹

318. While commending the whole-of-Government vision and strategy of Melbourne 2030 and associated policy, Prof. Catherin Bull concluded from her own analyses that there is a gap between the Government’s strategic planning and its actual capacity for delivery. In comparing Melbourne to other Australian states, she said it was the other states that were working out ways to achieve strategic goals ‘more effectively, through being more creative about governmental and statutory structures and the way they focus their delivery programs’. ¹²²

319. Recommendations through evidence were put to the Committee in relation to more effective management and use of existing public land assets. These centred primarily on two points:

- a need to increase the amenity and utility of existing space; and
- that new development of public land sites should cater for multiple uses.

320. In terms of the former, Mr Wright, of the Audit Expert Group observed that:

There is a lot of open space around the city at the moment that is just not properly utilised, for a number of reasons. It may be poorly located, there may be perceived security problems – a whole host of reasons. If those things can be tackled and you can increase the utility of the existing open space, you are going some way towards addressing [the] problem. ¹²³

321. Addressing increases in the need for open space and encouraging better use of existing public open space requires investment and planning to facilitate
access to that space, in the form of bike paths, walking tracks and linkages between spaces.

322. In relation to the second point, the Committee was made aware of several mixed and shared use developments and opportunities. Examples raised in the Inquiry included after-hours community access to the sports and aquatic facilities of an independent school in Melbourne’s east; the Northlake Children’s Services/Community Hub, a development that will provide multipurpose community spaces and early years services under a joint use agreement between Melton Shire Council, the Department of Education and Early Childhood Development and Caroline Springs College at Caroline Springs and the Vines Road Redevelopment in Geelong.

323. The redevelopment of the Vines Road site into a whole of community area represents a sound example of efficient use and development of public land.

324. The project is a partnership between the City of Greater Geelong, Department of Education and Early Childhood Development and Western Heights College, and will include the amalgamated campuses of the College, and construction of a new community building accommodating community and senior citizens activities. It is envisaged facilities used by the school during the day will be available to the wider community out of hours. These will include access to library services, a performing arts centre, sporting grounds, upgraded open spaces and, through local arrangement, access to other school building space.

325. However, one member of the AEG commented that ‘the spectre of public liability’ can inhibit the process of facilitating shared use of public spaces. The Committee brings this matter to the Government’s attention without having arrived at any conclusions.124

326. The need for long term, creative planning and use of existing public land and open space to cater to a range of stakeholder and community needs is clear. The Committee recognises that mixed use development and concentration of commercial and recreational activities into designated Activity Centres are key policy directions under Melbourne 2030. Other examples of benchmark mixed use development projects meeting Melbourne 2030 objectives are

124 AEG, above n 42, p 674.
currently listed on the Department of Planning and Community Development’s website.

**FINDING 4.1**

That school grounds and facilities have a demonstrated potential to serve as community public open space and other assets at relatively low cost.

**RECOMMENDATION 4.2**

That the Government consider ways of better utilising school grounds and facilities out of school hours for the benefit of local communities.

### 4.4 Green Wedges

327. The Committee received many submissions on the impacts of Green Wedges and while it has taken into account all matters raised, it is aware that several submitters requested an opportunity to give evidence but were unable to do so due to time constraints.

328. As a legacy of past metropolitan planning, and supported in varying degrees by successive governments, Green Wedges are tracts of land that separate growth corridors and serve as the ‘lungs’ of the city.

329. First flagged in 1966 by the then Minister for Planning, Sir Rupert Hamer, the notion of ‘green wedges’ was developed in a report by the Melbourne and Metropolitan Board of Works entitled *The Future Growth of Melbourne*. The Board’s proposals were formally adopted by the Bolte Government in 1968, and were converted into detailed policy subject to community comment by 1971.

330. The purposes of Green Wedges include:

- Providing opportunities for agricultural uses, such as market gardening, viticulture, aquaculture, farm forestry and broad acre farming
- Preserving rural and scenic landscapes
- Preserving conservation areas close to where people live
- Preserving renewable and non-renewable resources and natural areas (such as water catchments)
• Providing and safeguarding sites for infrastructure that supports urban areas (such as airports and sewage treatment plants)

• Allowing industries such as sand and stone extraction to operate close to major markets

• Enabling the development of networks of open space; and

• Providing opportunities for tourism and recreation.  

331. Under Melbourne 2030, the Government has ‘committed to providing better protection of Green Wedges through tougher planning controls over use and development, the introduction of the urban growth boundary, changes to planning provisions and changes to legislation’, as outlined above.

332. Melbourne 2030 identifies 12 Green Wedges situated on Melbourne’s metropolitan fringe outside the urban growth boundary. The Green Wedges are Werribee South, Western Plain South, Western Plain North, Sunbury, Whittlesea, Nillumbik, Manningham, Yarra Valley and Yarra and Dandenong Ranges, Southern Ranges, South East, Western Port, and Mornington Peninsula.

333. The Victorian Government’s primary means of implementing Green Wedges policy is via the Green Wedge Management Plans Project under the Department of Planning and Community Development. Under the project, the Department will provide guidance and support to local councils in developing Management Plans for each of Melbourne’s twelve Green Wedges, and will consider the statutory, strategic, environmental, economic and social requirements necessary to effectively manage these areas. The Government’s September 2007 submission to the Inquiry listed the steps taken so far in implementing the Project. These included a Practice Note to guide the development of Green Wedge Management Plans, establishing a Project Team to assist councils with Plan preparation, and providing six council with targeted grants to fund the development of Plans.  

334. However, over six months following the Government’s submission, the AEG Report concluded that despite the success of numerous planning and

126 DOI & DSE, above n 111, p 66.
127 DTF, above n 35, p 8.
128 Ibid.
legislative provisions, many Green Wedge areas were still under threat and subject to significant challenges. It received evidence from submitters that claimed inappropriate commercial use and residential subdivision in the guise of recreational or tourist-type developments were occurring.\footnote{AEG, above n 114, p 56.}

335. Further, the Green Wedges Coalition submitted that many local councils were failing to adopt Green Wedge Management Plans, and that planning provisions for Green Wedge protection were not being ‘defended’. It stated that Manningham City Council was ‘the first and as far as we are aware, only council to adopt a Green Wedge Management Plan, after community consultation in which our coalition was specifically included’. The Coalition did acknowledge however, that the Nillumbik, Yarra Ranges and Mornington Peninsula Shire Councils were ‘rigorous in defending their green wedges’, although apparently they had not adopted formal Management Plans.\footnote{Green Wedges Coalition, above n 97, p 4.}

336. Evidence to the Committee from representatives of the AEG highlighted several ‘inconsistencies’ and ‘anomalies’ as a result of the application of the Green Wedge zones.\footnote{AEG, above n 42.}

337. The Green Wedge Coalition submission contends there are a series of loopholes in Green Wedge policy that have arisen as a result of successful developer applications that consequently threaten Green Wedges. The Green Wedge Coalition argue that developments are undermining Green Wedges due to a disregard for protection provisions, shortfalls with zone provisions and an alleged pro-developer bias by VCAT.

338. Of the submissions received by the Committee that dealt either in whole or in part with Green Wedge planning and management, a significant proportion related to grievances with Green Wedge zoning over freehold land.

339. Several submissions received pertained to land in Heatherton, Yuroke and the Cardinia region, among others. Numerous land owners expressed deep concerns with the rezoning of areas, including their own freehold titles, to Green Wedge (GWZ) under the \textit{Planning and Environment (Metropolitan Green Wedge Protection) Act 2003}.\footnote{AEG, above n 42.}
340. These parties expressed concern that in effect, the legislation imposed financial obligations on them to maintain their land, while diminishing their freehold tenure by limiting the way the land could be used. Submitters argued the rezoning occurred without sufficient consultation and that the creation of the zones compromised the future economic independence of the subject landowners, for which no compensation has been offered.

341. Those affected by the Green Wedges policy also raised questions regarding the use of public land within the urban growth corridor for housing, while placing the obligation to maintain open space on private land owners. They suggested that the reverse should be occurring.

342. The Land Owners Rights Association Inc, submitted that if the Government were to continue its Green Wedges policy, then it should consider compensating land owners for both the increased burden arising from this policy and the loss of freehold rights. They also proposed that Councils should have different rate charges for urban and non-urban zonings.

343. Other themes arising from these submissions include:

- a perceived inconsistency between the State government’s prerogative to develop public land and the restrictions imposed on landowners via Green Wedge zoning in developing, usually via subdivision, private lots. This was described as a disenfranchising, discriminatory and a violation of rights;

- an argument that Green Wedge zones and the corresponding restrictions on land use have been inappropriately applied. For example, that future agricultural production will be difficult to sustain as a result of encroaching urban development and that subject areas contain little of environmental value which would stop future development of the area.

- a perceived inequality in private land owners bearing the cost of maintaining Green Wedges, which have been mandated for wider public benefit, without any assistance from Government. Direct compensation, or adjusting council rates to reflect the obligation on private landowners to maintain their land as undeveloped open space, were commended as a means of mitigating the inequality;

- concern that the Urban Growth Boundary (UGB), which underpins the Green Wedge Zones, has been arbitrarily and nonsensically applied.

344. The Committee also heard evidence from the Hon. A.J. Hunt A.M., the former Minister for Planning, who contended the Green Wedges are essential for Melbourne and have, for 40 years, been the core feature of Melbourne's
planning policies. Mr Hunt argued that long term, bipartisan planning, together with a recognition by both local and State Government of the benefit to the broader community of Green Wedges, is critical to their protection.

345. Further evidence with regard to Green Wedges called for a land capability study to determine optimal land uses. Such a study, or audit, is in line with the recommendations in previous chapters, and would provide more detailed information on land capacity and suitability to a variety of uses and zonings.

346. A number of submissions advised that a single agency should be empowered with management authority for all Green Wedge areas. For example, the Committee notes the evidence from the Hon. A.J. Hunt A.M. that the Port Phillip and Western Catchment Management Authority had been particularly active and successful in researching and advocating for the protection and management of Green Wedges. It was the opinion of the witness that consolidating authority in one agency, such as the Port Phillip and Western Catchment Management Authority, would encourage more effective and active management of Green Wedges.132 Ms R. West, on behalf of the Green Wedges Coalition also suggested the need for a single authority, independent of government, stating ‘We feel there is a need for a green wedges and public land authority that would be independent of the DSE’.133

FINDING 4.2
The Committee supports Green Wedges and many of the principles of Melbourne 2030 policy relating to public open space, however evidence to the Committee indicates the implementation of these policies has fallen short of community expectations and the Government’s stated aims.

FINDING 4.3
The Government’s aim of protecting public open space in Melbourne has not always been achieved. There are many examples of public land being sold and developed for purposes that do not provide community benefit with local open spaces being lost.

133 Ms R. West, Green Wedges Coalition, Transcript of Evidence, 28 November 2008, p 139.
FINDING 4.4
The population estimates on which the Melbourne 2030 policy are based will likely be achieved by the year 2020.\textsuperscript{134}

RECOMMENDATION 4.3
That the Government take note of the Melbourne 2030 Audit Expert Group recommendations and the concerns raised by the large number of submitters to the Public Land Development Inquiry.

RECOMMENDATION 4.4
That the Government acknowledge that there is a strong perception in the community that Melbourne 2030 policy is not protecting public land and open space in the community’s interests.

RECOMMENDATION 4.5
That the Government allocate additional resources for the implementation of Melbourne 2030 policy initiatives and the preservation of Green Wedges to ensure greater protection of public land and open space in Melbourne.

\textsuperscript{134} C. Houston & R. Millar, ‘City of 8 million “unliveable”’, The Age, 5 September 2008, p.1
CHAPTER 5: Case Studies

347. Following its call for submissions, the Committee received both general and specific evidence in relation to the sale, alienation or development of public land. In addition to many submissions on individual public land sites, multiple submissions were received in relation to five key sites, which were identified in the Committee’s previous interim reports, these sites are:

- Kew Residential Services (KRS) site
- St. Kilda Triangle
- Caulfield Racecourse Reserve
- Port Campbell Headlands
- Devilbend Reserve

348. In addition to the above major case studies, later in this chapter the Committee highlights further cases of existing or future proposals to sell and/or alienate public land for development that were the subject of passionate local community concern over.

349. For the most part, all of these case studies also illustrate the common concerns raised throughout the Inquiry regarding increasing loss of public land and public open space to private developments, the inadequacies of Government policies to protect and preserve public land and lack of real community input into the decision making processes.

350. As noted earlier in this Report, evidence would suggest Administrative Arrangements Order No. 58 was simply used by the Government to limit the Committee’s evidence and to avoid responding to community input with respect to sites such as Kew Residential Services, Port Campbell headlands and Devilbend Reserve. Although requested, at no stage did the Government provide the Committee with any internal assessments made under Administrative Arrangements Order with respect to these sites that would support the Government’s decision not to comment on the sites.
5.1 Kew Residential Services Site

5.1.1 Background and Restrictions to Evidence

351. During the debate in the Legislative Council in May 2007 when the Select Committee was established, a number of Members highlighted concerns over the processes surrounding the development of the KRS site (formerly Kew Cottages).

352. 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 currently facilitating the development of the site in conjunction with Walker Corporation.

353. Soon after the Walker Corporation had signed the contract for the KRS development, it sold its $1.2 billion property portfolio to the Mirvac Group. However, the KRS agreement required that the Walker Corporation could not sell the KRS development without consent of the Victorian Government.

354. Later in this chapter, the Committee notes the involvement of political lobbyist Mr Graham Richardson in attempting to gain the agreement of the Victorian Government to allow Walker Corporation to sell the development project to Mirvac. The Government subsequently held that Walker Corporation was responsible for completion of the first two stages of the project.

355. The Committee received several written submissions relating to this site. Key issues 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.

356. The Committee subsequently held a series of public hearings in relation to the KRS development, taking evidence from local community groups, the Boroondara City Council, and developers Walker Corporation and Mirvac.

357. The Committee’s ability to fully examine concerns raised in evidence were significantly limited as a result of the Government’s narrow interpretation of the terms of reference and its denial that the KRS issue could be examined within the Committee’s reference. This is despite the clear intention of the Legislative Council when establishing the Committee that one of the major public land issues to be examined would be the former Kew Cottages site (refer to early discussion in Chapter 1).

358. Initially, the Department of Infrastructure and Major Projects Victoria appeared to be willing to consider the KRS issue as part of the Committee’s investigations and agreed to host an informal site visit and discussion with the Select Committee on 26 September 2007. However, the Attorney-General subsequently advised that the Government would adopt a narrow interpretation of the reference which in turn lead to the Government refusing to answer questions or provide documents on the KRS development throughout the remainder of the Inquiry.

359. In particular, the Minister for Major Projects and the Secretary of the Department of Infrastructure both attended separate public hearings and gave evidence on broad Government policy, but refused to answer specific questions relating to the KRS development. Further, the Committee was denied access to the Executive Director of Major Projects Victoria to discuss related matters raised in evidence.
Despite the Government’s unwillingness to discuss the KRS issue, the Committee notes that developers Walker Corporation and Mirvac accepted invitations to give evidence with the Managing Director of Walker Corporation, Mr John Hughes, travelling from his Sydney-based office to appear before the Committee.

**FINDING 5.1**

The Committee’s ability to investigate the development of the Kew Residential Services site was significantly restricted by the less than full cooperation from the Government.

**FINDING 5.2**

The Government’s assertion that the Kew site could not be considered by the Committee under its terms of reference is in conflict with the clear intention of the Legislative Council in establishing the Select Committee. It is contrary to accepted parliamentary practices that a parliamentary committee may interpret its own terms of reference, and displays contempt for the valuable contributions made by local community groups and local councils on this important issue.

### 5.1.2 The Planning Process

361. In its written submission and evidence, the City of Boroondara highlighted a number of concerns over the nature of the development and noted the Council and local community were not afforded proper input into the planning process.

362. While the local council believed the KRS site was an important location for a new residential development within Boroondara, it maintained the view that the site was restricted by a number of factors which affected the way in which it could, and should be developed. The council’s submission highlighted these constraints, including:

- Distance from the Kew Junction Activity Centre;
- The cultural heritage and landscape significance of some elements of the site. On 1 December 2004, the KRS site was formally included on the Victorian Heritage Register. Heritage Victoria’s registration generally accorded with the vision for the KRS site expressed through Council’s KRS Urban Design Framework (UDF), August 2003;
- Proximity to heritage and landscape assets off-site – in particular the Willismere Towers and proximity to Yarra Bend Park; and
• The presence of *phytotothrae cinnimomi* (a soil-borne disease affecting vegetation discovered on site in 2006).^{135}

363. Following the Government’s announcement in May 2001 to make the KRS site available for development, the City of Boroondara sought to implement a planning framework to appropriately manage this development. To this end in late 2001, based on community consultation, the Council prepared an Urban Design Framework (UDF) for the KRS site. The UDF was adopted by the Council in August 2003 with some modifications (CB-UDF), which sought to set aside at least 50 percent of the site as open space, set building height limits and sought to protect areas of cultural and heritage significance.

364. In early October 2003, the State Government released its own UDF (VG-UDF), which was prepared without consultation with the local community, and departed from the CB-UDF.

365. In late October 2003, the Boroondara City Council proposed planning scheme amendment C38, to both rezone the KRS site from public-use zone to residential zone, and applied an overlay to implement the CB-UDF.

366. In early November 2003, the Minister for Planning introduced planning scheme amendment C53. This amendment did several things:

• it rendered amendment C38 redundant,
• rezoned the land from public use to residential,
• applied and overlay to implement the VG-UDF,
• made the Minister for Planning the responsible authority for the site,
• placed limitations on community input, and
• removed VACT appeal rights.

367. Concerns were expressed to the Committee that the planning arrangements failed to allow local participation and input into the project, and meant the project lacked transparency. The City of Boroondara noted that:

^{135} Boroondara, above n 59, p 4.
Quite simply, the planning arrangements did not allow for the proper input by the City of Boroondara and did not allow for any public scrutiny of the proposed KRS development. The State Government chose to make itself development facilitator, planning authority, responsible authority and financial beneficiary of the site — leaving the council in a most curious predicament.\textsuperscript{136}

368. Mr Don Anderson, Kew Cottages Coalition, submitted that:

In the case of the Kew Cottages site, the real owners, the people of Victoria, were never properly consulted by the Government of the day when the decision to close the cottages and sell this property to a private developer was made.\textsuperscript{137}

369. In June 2005, the first Walker development plan was lodged with the Boroondara City Council. As an insufficient level of detail was provided the Council then commenced VCAT proceedings to ensure this information was provided. This action was withdrawn when a more expansive plan was lodged with the Council in December 2005.

370. In March 2006, the Minister for Planning approved the Walker development plan.

371. In April 2006, Heritage Victoria issued a permit for stage 1 of the development, as the KRS site had been included on the Victorian Heritage Register in December 2004.

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FINDING 5.3 \\
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The process whereby the State Government overrode the planning powers of the Boroondara City Council in relation to the KRS site has resulted in a lack of transparency and openness. \\
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FINDING 5.4 \\
\hline
There exists an apparent, if not real, conflict of interest in the State Government’s roles as the site owner, joint developer, planning authority, regulator and beneficiary of the development. \\
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FINDING 5.5 \\
\hline
On balance, the re-development of the KRS site has not been in the broader public interest. \\
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\textsuperscript{136} City of Boroondara, \textit{Minutes of Evidence}, 26 September 2007, p 16.
\textsuperscript{137} Mr Don Anderson, Kew Cottages Coalition, \textit{Submission No 59}, p 1.
5.1.3 Influence of Political Donations and Lobbying

As noted in previous interim reports, the Committee was concerned over evidence relating to perceptions that political donations and political lobbying may have had improper influence in planning decisions on the KRS development. In particular, the Committee attempted to investigate:

- the role played by political lobbyist, former Senator Graham Richardson; and
- the purpose and timing of political donations made by Walker Corporation and Mirvac Group to the Victorian ALP during the awarding of the contract to develop the KRS site.

Involvement of former Senator Graham Richardson

Questions have been raised 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 his subsequent intervention in the implementation of the tender arrangements by the State Government.

The Committee understands Mr Richardson was engaged, apparently unsuccessfully, by Mirvac to lobby the Victorian Government to allow Walker Corporation to sell the KRS development project to Mirvac.

The Committee attempted to investigate the nature of Mr Richardson’s involvement in the project, including the extent of his engagement by Walker Corporation and/or Mirvac, and the purpose and outcomes of any related meetings with the Victorian Government.

As reported earlier, Government departments and Ministers would not discuss the KRS development or any involvement of Mr Richardson in the project with the Committee. However, the Minister for Major Projects, in his evidence to the Committee on 22 May 2008, confirmed that he did meet with Mr Richardson but refused to clarify the extent of such meeting and or the presence of other Government department officials.

Mr John Hughes, Managing Director, Walker Corporation, gave evidence to the Committee on the extent of Mr Richardson’s role in the project agreement:
Mr HUGHES — We did not employ him in relation to the expressions of interest nor in relation to winning the — the development bid and becoming the preferred developer. We did ask for his assistance in the final negotiation of one clause in the development agreement. That related to the key personnel provisions.138

378. In order to further clarify these matters, the Committee invited Mr Graham Richardson on two separate occasions to appear before the Committee. Despite Mr Richardson having signed receipt for both invitations by registered post, no response has been received.

379. Mr Richardson resides in New South Wales, which makes it difficult for the Committee to enforce a summons. As such, the Committee has been unable to pursue this matter and wishes to highlight its concern over the refusal of this potential key witness to respond to the Committee’s invitations to give evidence.

**Political Donations**

380. The Committee was also concerned at evidence surrounding political donations made to the Victorian ALP by the Walker Corporation and Mirvac Group at the time of awarding the contract to develop the KRS site. In particular, the Committee notes the statement by Mr John Hughes, Managing Director of Walker Corporation, that political donations may provide developers with favourable access to Ministers and other Government decision makers.

381. As noted in earlier interim reports, the Committee acknowledges that Walker Corporation has made political donations to not only the Australian Labor Party, but to the Liberal Party and Australian Democrat Party. However, it is the volume of funds donated ($100,000) and timing of the donation that has led to a suspicion that the donation was aimed at influencing the KRS tender process in favour of the developer.

382. When questioned about the timing of this donation, Mr Hughes advised the Committee that Walker Corporation had made contributions to both parties for many years. He further refuted the implication that the donations were made to solicit preferential treatment or favours.

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383. When questioned further about the motivation and rationale underlying political donations Mr Hughes advised the Committee that it was the responsible thing to do and at best gets you faster access to the Government to put your case.

Mr KAVANAGH — The $50 000 that you donated to the ALP at the beginning of the year 2000, shortly after the election of the Bracks Government, got you access; is that right?

Mr HUGHES — It does not get you access up the spot, but what it does, it allows us to support the government of that particular day, if it was Bracks you said. If we wished to be able to put a case at some point in the future, then one could hope that it would favourably get you that access faster than others, but it does not achieve anything. At the end of the day being able to have an appointment with somebody, to be able to put your case, does not guarantee a result. All of you, sitting there, know this.139

384. In Chapter 2, the Committee noted a wider public concern over the potential influence of corruption in the sale of public land, and the need for the establishment of an independent commission against corruption.

**FINDING 5.6**

Evidence put to the Committee indicates a strong public suspicion that the nature and timing of political lobbying and donations may have had an improper influence in the awarding of the tender to develop the Kew Residential Services site. On the basis of evidence received, the Committee finds that:

1. Mr Graham Richardson lobbied on behalf of Mirvac on the development and played a pivotal role in Walker Corporation securing a change to the terms of the contract to develop the Kew Residential Services site; and

2. the community cannot be confident that donations made by Walker Corporation to the Australian Labor Party had no improper influence in the tender process.

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139 *Ibid*, p 89
RECOMMENDATION 5.1
That issues relating to donations from organisations or individuals engaged in a tender process with the State be referred to the Electoral Matters Joint Investigatory Committee of the Victorian Parliament as part of its Inquiry into Political Donations and Disclosure. In particular, the Electoral Matters Committee should consider whether political parties be precluded from accepting donations from those engaged in commercial use or development of public land or other public assets.

5.1.4 Lack of Publicly Released Information

385. One of the key concerns raised in submissions and evidence to the Committee surrounded the lack of publicly released information by the Government on the financial arrangements of the development.

386. The Kew Cottages Parents Association noted in its evidence:

The Association has been highly concerned about the lack of public disclosure on the finances of the redevelopment. The State Government has always stated that the purpose of the sale of the public land on which Kew Cottages are located has been to raise the funds necessary to build new houses for the residents. Any money left over at the end of the redevelopment would go back into disability services. The Parents Association has consistently expressed to the Government its concerns about the lack of public disclosure on the finances related to the contractual agreement between the Government and the developer and the State Government's anticipated returning of leftover funding to disability services. Today we remain completely unclear as to how much money will be collected from the sale of the land and how much money will be available for future use for those Victorians with that disability.140

387. The lack of accountability was also a concern raised by Boroondara City Council:

Open and transparent asset management processes are necessary to ensure proper accountability and evaluation of the public benefits derived from such sales. There has consistently been an unwillingness by the State Government to disclose the financial arrangements between itself and the developer or to release details of the development agreement. The financial return to the state government arising from this land, and the specific disability service improvements which proceeds from the sale have funded are unknown.141

140 Kew Cottages Parents Association, Minutes of Evidence, 26 September 2008, p 27.
141 Boroondara, above n 135, p 18.
388. As part of its evidence, Walker Corporation provided the Committee with a copy of the financial model within the KRS 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.

389. The Committee noted in a previous interim report that it acknowledged that the release of certain commercial-in-confidence documents may mean organisations engaging in tender processes may be less willing to provide the Government with frank assessments. However, 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.

390. The Committee also notes the KRS development process was overseen by an independent probity auditor, however this probity audit has not been released publicly. At a public hearing in May 2008, the Minister for Planning was requested by the Committee to provide a copy of the probity audit, however the Committee is disappointed that the Minister subsequently did not provide these documents, stating his Department did not have the documents.

391. The Committee notes the contract for the Kew site, including the profit share arrangements between Walker Corporation and the Government, requirements regarding community housing and liquidated damages are available at www.tenders.vic.gov.au

392. Despite the recommendation in the Committee’s first interim report, the Committee notes that the Victorian Government has not made any additional documents in relation to the KRS development and financial model available to the general public. The Committee also concludes the probity audit report of the KRS tender should be publicly released.
FINDING 5.7
In effect, the development of the KRS site has resulted in the privatisation of a public facility. While the proceeds from this development are to be used to fund and support disability services, the Committee believes such services should be funded from general revenue and should not be dependent on the sale of public assets.

FINDING 5.8
The community is not aware of the full financial arrangements with respect to the KRS development.

RECOMMENDATION 5.2
That the Victorian Government publish the full financial arrangements and probity report for the KRS development.

RECOMMENDATION 5.3
That the Victorian Ombudsman investigate the probity of the KRS development tender processes.

5.1.5 Future Use of the Site
393. Stage 1 of the KRS development was officially completed on 30 June 2008.

394. On 30 June 2008, the Committee received evidence from the Kew Cottages Coalition who provided an outline of a proposal for an integrated disability support and recreational area within the KRS site. This proposal includes a Family Support & Respite Centre for the Disabled, a Victorian Centre for Excellence for the Disabled, and a Community Recreational and Sporting Precinct.

395. It is worth noting the sentiments of Dr Grayson, a medical practitioner who made a passionate case to the Committee for enhanced disability services at the Kew site:

The measure of a society is how well we look after the weakest in our society, and currently there are a lot of families — Victorians — who are doing it tough with disabled kids and family members, and this would be a new approach to helping them. I cannot think of a better site in the sense that the Government already owns the site and it already has
buildings which, with only relatively minor renovations, would be suitable to provide this facility.\textsuperscript{142}

396. Further, on the question of the future use of the site and the Government’s contractual obligations with Walker Corporation, Mr Brian Walsh of the Kew Cottages Coalition noted in his evidence as follows:

The question is: who takes it off their hands? We would say, as happened in the case of the Abbotsford convent, which you would be aware of, Chair, the Government would on just terms be able to buy its way back in. I would not expect, on what has happened so far, for Walker Corporation to object to that.\textsuperscript{143}

397. The Committee wrote to the Premier on 21 July 2008 seeking an urgent meeting to discuss the future use of the site and the proposal put forward by the Kew Cottages Coalition. The Premier referred the matter to the Minister for Community Services, who in turn advised that the Government would work with community organisations and local residents including the Kew Cottages Coalition with respect to the development.

398. In evidence presented to the Committee, the cost to the Government of buying out the contract was estimated at around $10 – 11 million. Based on current market valuations for land in the surrounding area, this cost could be offset through the sale of approximately 10 quarter acre blocks, without compromising the integrity of the site.

399. The KRS site was shown as the preferred location for this facility for a number of reasons, including:

- The site is well serviced by public transport;
- The infrastructure required to establish and operate a Centre for Excellence for disability services, including respite care, already exist on the KRS site;
- The remaining infrastructure on the KRS site is less than 10 years old, and would not require a substantial capital investment;
- Under the current Community Housing model for disability services, there is no provision for short-term respite care, and
- Some disability services, such as dental care, require specialised provision due to the specific needs of the patients.

\textsuperscript{142} Kew Cottages Coalition, \textit{Transcript of Evidence}, 30 June 2008, p 699.

\textsuperscript{143} \textit{Ibid}, p 701.
The need for improved disability services and the opportunities within the Kew site was also referred to in evidence including the Kew Cottages Parents’ Association who noted:

The Association has always believed that the Kew Cottages site has the potential to be an example of best practice in community-based service delivery for people with an intellectual disability, whilst also meeting the needs of the wider community. To this end, Kew Cottages Parents Association has considered that a larger portion of the site - in addition to land used for the community residential units - should be dedicated to the purposes of public health and other community infrastructure responding to the needs of the immediate local community (for example, aged care, disability services, community health, medical and dental facilities).  

The Committee also notes the Auditor-General’s March 2008 report, *Accommodation for People with a Disability* report, which noted with concern that the provision of disability accommodation in Victoria was in crisis and that the Department of Human Services needs to come up with a solution. The Auditor-General acknowledged in his report that some positive change had been delivered since his first report in 2000.

Evidence put to the Committee by families of former KRS residents indicate that changes to their living arrangements did not benefit all former residents.

Since conclusion of its public hearings on 30 June 2008, which coincided with completion of Stage 1 of the development, the Committee is aware the Kew Cottages Coalition have formally objected to the Heritage Permit Application by Walker Corporation for Stage 2 of the development. The Committee notes that Walker Corporation was recently fined by the Supreme Court following breaches to the Heritage Victoria permit during Stage 1 excavation works which resulted in damage to heritage-listed trees.

**FINDING 5.9**

Based on current development proposals, the further development of the KRS site will result in a missed opportunity to use the purpose built facilities for much needed disability and respite care.

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RECOMMENDATION 5.4
That the Government review the current proposal for the KRS development to ensure the project incorporates protection of the heritage trees and buildings, protection of open space and provision of much needed disability services.

5.2 St Kilda Triangle Development

404. The St Kilda Triangle is a parcel of state Crown land bounded by Jacka Boulevard, the Upper Esplanade and Cavell Street, St Kilda. The site, comprising the Palais Theatre, the former Palace nightclub and neighbouring car park, is being redeveloped as part of the St. Kilda's Edge program.

405. The St Kilda Triangle development has received wide public comment and media focus both before and during the course of the Committee’s Inquiry. Submissions and evidence put to the Committee by residents and traders focussed on strong concerns about the planning process and extent of commercial development for this iconic piece of public land on the foreshore.

406. There have been numerous passionate public rallies by residents, traders and people from outside the area, all objecting to the loss of prime public land and open space to commercial interests.

407. This development was of interest to the Committee's investigations not only as it presented another example of valuable public land being developed for mainly private profit, but also due to the unusual process whereby the State Government, by legislation, handed over virtually all responsibility for the development and future maintenance of the site to the City of Port Phillip, with no resources for even though it is state Crown land.

5.2.1 Planning Process

408. The State Government, through the St. Kilda Land (Triangle) Act 2006, has appointed the City of Port Phillip as the Committee of Management to manage the redevelopment and the long term leases on behalf of the State. Ministerial approval is still required in some instances with respect to leasing of the land.

409. ‘Management’ of the site includes the Council conducting the tender process, i.e., calling for and assessing tenders and selecting the preferred tenderer, exercising its role as planning authority, promoting the development and
finally acting as Committee of management for the site. Submitters have raised concerns about the appropriateness of the Council fulfilling all these roles as being a perceived if not real conflict of interest, particularly as the tender process has not been open and transparent and appeal rights have been removed.

410. In spite of community objections, the previous Council voted to remove third party appeal rights to the Victorian Civil and Administrative Tribunal (VCAT), assuring the community that any development on the site would conform to the Urban Design Framework, which had been developed with the community and would not be overly commercial in focus.

411. In 2002, the City of Port Phillip adopted the St Kilda Urban Design Framework Plan (UDF), following several years of extensive community consultation. The UDF identified opportunities for capital improvements and integrated management of the foreshore. In July 2004, the UDF was approved by the Minister for Planning and incorporated into the Port Phillip Planning Scheme along with site-specific planning controls to allow for the development of the Triangle Site as an entertainment and leisure precinct, with significant public spaces. The site is subject to a Development Plan Overlay which incorporates the UDF. This requires that a development plan must be prepared to the satisfaction of the responsible authority – the Port Phillip Council. Any subsequent permit must generally be in accordance with the development plan. The permit is exempt from the normal third-party review rights at VCAT.145

412. The Council established the St Kilda’s Edge Committee chaired by its Chief Executive Officer, Mr David Spokes, to oversee delivery of the St Kilda’s Edge projects including the redevelopment of the Triangle Site.

413. In May 2007, the Council selected BBC consortium comprising Babcock and Brown and its subsidiary Citta Property Group and signed a development agreement for the Triangle. BBC submitted a development plan for approval by Council.

414. Significant public disquiet over the size and commercial focus of the
development occurred as soon as the Development Plan (DP) became public
on 7 May 2007.

415. The development plan for the site, spread over five levels included:

- 181 retail tenancies, to include 36 national chains and 90 ‘independents’
  (defined by the developer as a trader with less than 10 stores)
- 6 large nightclub and music venues plus bars and restaurants (including
  a restaurant to train hospitality students (a TAFE college))
- 6 or more cinemas
- a 73-bed hotel, pub and convention space
- a gymnasium
- an art gallery
- 1150 space car park

416. The ‘public spaces’ will be relegated to public grass areas on the roof of the
complex that appear to be less than already exists on the site, ‘public’
walkways throughout, ‘public’ steps leading to Jacka Boulevard and a shop-
fronted ‘public’ plaza.

417. According to the financials presented to the City of Port Phillip during the
tender process, this $300 million commercial development is the return
needed by the developer to cover its outlay to refurbish the iconic Palais
Theatre, estimated at around $20 million, plus its investment in the art gallery,
the hospitality training restaurant and the public areas mentioned above,
estimated to cost a further $40 million.

418. At its meeting on 13 December 2007 the Council foreshadowed some
amendments to the proposal and deferred the matter until 24 January, later
extended to 7 February 2008.

419. On 7 February 2008, the City of Port Phillip Statutory Planning Committee
approved a revised St Kilda Triangle DP. Two thousand people attended a
rally and marched from the Palais Theatre to the St Kilda Town Hall and an
estimated 800 people attended the Planning Committee meeting. Many
members of the public requested opportunity to address the Committee. All but one or two opposed the development.

420. The revised plan included a cap on the area of shops to a maximum of 19,000 square metres, an increase in the area of open space to a minimum of 18,000 square metres and car parking for 980-1000 cars. However, the DP remains a large, commercially focussed development on a small site of public land close to the foreshore.

421. While the current development proposal suggests more than 50 per cent of the site at ground level will be used for open space, it is proposed that 20 per cent of the available floor area will be allocated to retail related purposes. It has been suggested that the commercial space will be in the vicinity of 110,000 square metres. Parallels have been drawn between the size of the proposed commercial development and major Melbourne shopping centres - in comparison Chadstone has 137,000 square metres of commercial space.

422. On 26 August 2008, the City of Port Phillip approved a final amended DP which reportedly includes a reduction in retail outlets and increase in open space. While the Committee has not received details of final amended plans, opponents of the development have publicly questioned the extent of changes and are reported to be considering legal action against the council.

423. A council officers’ assessment of the changes has, at the time of writing, not been made public.

5.2.2 Community Concerns

424. As noted earlier, the St. Kilda Triangle development has been subject to significant community opposition. More than 8000 submissions have been received by the City of Port Phillip opposing the proposal. Large public rallies have taken place and public galleries at council meetings have been crowded with objectors. A public campaign continues to oppose the development.

425. The Committee held hearings over two days in respect of this issue which attracted significant interest from Port Phillip residents, local business representatives and others. Written submissions were also received from Unchain St. Kilda, a group established to represent the St. Kilda and wider
community on the development of the St. Kilda Triangle site. Some of the concerns raised in submissions and hearings include:

- that prime public land is being alienated for inappropriate commercial development;
- the sheer size and nature of the development, called a ‘Chadstone by the sea’;
- that it does not comply with the urban design framework prepared specifically for the site by the Council with community input over several years;
- failure to comply with the zoning of the area or the use of public land under the Crown Lands Act;
- changes to the DP had not altered the balance between elements of the project, with retail and hospitality continuing to dominate;
- to destruction of the unique, 100 year old split-level beachside promenade – the Catani design of upper and lower Esplanade, which stretches along the foreshore to the Catani Gardens at West St Kilda;
- loss of existing views to the beach, to the Palais Theatre and to Luna Park from the Upper Esplanade, from the foreshore and from the site. Luna Park in particular will be difficult to see;
- impacts of the development on the architectural integrity of the heritage Palais Theatre - two rather tall and bulky buildings will abut the Palais Theatre – it will no longer be free standing - and a third, smaller building will be placed directly in front of it;
- the increase in the number of licensed venues on the site in view of the large number of existing venues in the area;
- the removal of third party appeal rights; and
- concerns in relation to the planning and selection process for the development, including the conflicted role of the Council as proponent, planning authority and committee of management.

426. The Port Phillip Council and Citta Property Group disputed these claims during their evidence to the Committee.

427. In its supplementary submission, Unchain St. Kilda brought to the Committee’s attention a number of concerns with the planning process including:

- the development does not comply with the St Kilda Foreshore Urban Design Framework in terms of the nature of the uses and the scale of the uses proposed;
• claims that the St. Kilda Edge Committee, chaired by City of Port Phillip C.E.O, encourages tenderers not to be limited by the UDF; and

• lack of an independent economic, social and heritage analysis and independent expert advice as to whether the development plan does not conform to the UDF.

428. Another concern that continued to be raised with the Committee related to the Council’s role in the development. There have been suggestions that there is an absence of checks and balances for the development, given the Council is both proponent and responsible authority. This perception has been exacerbated by the abolition of third party appeals to the Victorian Civil and Administrative Tribunal.

The removal of third-party appeal rights was obviously a big problem in this, because VCAT at least provides one of the most obvious checks and balances in the whole project.¹⁴⁶

429. Disquiet over the Council’s role in the development, also include that the full scale of the development did not become apparent until after third-party appeal rights had been removed.

It seems coincidental that the full scale of this development did not become apparent to council until after the St Kilda triangle act had been passed and third-party rights had been removed. The fundamental question to be asked here is: why would the CEO of the council state publicly that there would not be retail intensive development on the site at the beginning of 2006 and a year later be proposing a development that is so big?¹⁴⁷

430. Questions were also raised as to a potential conflict of roles of the Council as proponent, committee of management and planning authority. The Committee shares the concerns of Unchain St. Kilda with respect to the conflicting roles of the City of Port Phillip C.E.O:

In particular there is a perception that the Council, led by its CEO and the councillors on the St Kilda Edge Committee, has made up its collective mind in advance to approve the BBC proposal with only minor amendments.¹⁴⁸

I have criticised, clearly, the fact that the CEO sat on the St Kilda Edge Committee. I think that destroyed any checks and balances within the council. But it may well be that in some cases it is appropriate to have

¹⁴⁶ Mr David Brand, Transcript of Evidence, 5 March 2008, p 368.
¹⁴⁷ Mr David Carruthers, Transcript of Evidence, 5 March 2008, p 376.
¹⁴⁸ Unchain St Kilda, above n 144.
the CEO sit on a similar sort of committee. I think this is something that the Minister for Planning, again, should consider at the start of the process. If you are going to give it to the council to manage, how should the council set itself up? What sorts of checks and balances, Chinese walls et cetera should be set up at that stage?149

431. Several representatives of the local community also suggested that the development is not sympathetic or compatible with its surrounding area and that changes to the development will both detract and destroy the area’s ambiance through the loss of iconic view lines of the foreshore and bay.

What we have got now is that they have kept the bulk of the building in the development plan; they have taken off the roof form, which was a fantastic roof form; it was based on Luna Park, and it was a beautiful piece of sculpture. We have got something which is now still blocking out the Palais but has lost its charm and its potential to be something special to look at. So in a way we have ended up with the worst of all possible worlds. I believe that building should be a one-storey building, and its roof should be at the level of the rest of the open spaces and that you should be able to look straight across the top of it at the Palais. At the moment we have got something interrupting the view and nothing on top of it to justify it in terms of charm and beauty.150

432. The Committee heard from several witnesses, including the developer, Citta Property Group, that if the State Government had contributed funds for the restoration of the Palais Theatre, then the scale and commercial focus of the proposed development could have be considerably reduced.

433. Evidence put to the Committee from representatives of local residents and traders acknowledges the existing site is in need of restoration and some from of redevelopment. However, it is the scale and nature of this development that has lead to such strong opposition. Unchain St. Kilda believe that ‘with public investment, the current plan could be rejected and the developer invited to work with the community on a new plan, which will respect the heritage and history of the site and its location’.

434. The Committee notes a petition was recently tabled in Parliament ‘calling on the government to provide sufficient public funds to restore and refurbish the heritage Palais Theatre and to ensure that any development on the site is primarily for cultural, entertainment, recreation and public open space as was always promised to the community.

149 Unchain St Kilda, Transcript of Evidence, 5 March 2008, p 352.
150 Brand, above n 145, p 372.
FINDING 5.10

There is significant concern around the process and outcomes of the proposed St Kilda Triangle development. The Committee finds that there is considerable basis for community concerns with respect to inappropriate use of valuable public land.

FINDING 5.11

Evidence put to the Committee strongly suggests that the proposal should be renegotiated by the Government, the Port Phillip Council and developer in consultation with the community with a view to:

- reducing the size and nature of the development and its impact on the local community and amenity; and
- complying with the Urban Design Framework.

FINDING 5.12

Evidence put to the Committee indicates that the development plan as submitted by Citta Property Group does not conform with the St Kilda Urban Design Framework, and as such the Port Phillip Council may have erred in approving the development.

FINDING 5.13

The St Kilda Triangle development process establishes a dangerous precedent for the development of public land in any suburb or regional town in Victoria in a number of ways because of the combination of:

- the social and heritage significance of the site;
- the unique process involving the passing of the St Kilda Triangle Act, which confers virtually all responsibility for the site from the State Government to the Port Phillip Council;
- the multiple, conflicting roles of the Council as proponent, planning authority and committee of management;
- the lack of transparency in the tender process;
- the removal of third party appeal rights; and
- the commercialisation of public land.
RECOMMENDATION 5.5
The Committee strongly encourages the Victorian Government to work more closely with the Port Phillip Council, Citta Property Group and the local community within the existing legislative and contractual arrangements, to reach an outcome to the St Kilda Triangle development proposal that best meets community expectations.

RECOMMENDATION 5.6
The Committee recommends that the State Government allocate sufficient public funds to restore and refurbish the heritage Palais Theatre, to decontaminate the site, and to ensure that any development on the St. Kilda Triangle site is primarily for cultural, entertainment, recreation and public open space as promised to the community.

RECOMMENDATION 5.7
The Committee recommends that the Victorian Ombudsman investigate the probity of the St Kilda Triangle development processes that were followed by the State Government and the Port Phillip Council.

5.3 Caulfield Racecourse Reserve
435. The Committee received several written submissions highlighting concern over the continued alienation of the substantial area of public land within the Caulfield Racecourse Reserve. Community and local council concern over this issue has been heightened as a result of a proposal by the Melbourne Racing Club (MRC) to upgrade the Reserve and to develop adjacent freehold and Crown land.

436. The site is bounded by Station Street, Normanby Road, Balaclava Road and Kambrook Road. The land is reserved by an 1879 Crown Grant in order to provide a site for:

- a race course;
- public recreation ground; and
- a public park at Caulfield.

5.3.1 Redevelopment Plans
437. The Melbourne Racing Club (MRC) is developing a master plan for the Caulfield Racecourse Reserve which includes a proposal to redevelop both Crown land and adjacent freehold land owned by it to create a ‘community
hub’ consisting of approximately 1,000 dwellings and 35,000 square meters of retail and commercial office space.

438. Glen Eira City Council considered the MRC master plan at a meeting on 4 September 2007. The Council made several resolutions including to ‘not seek authorisation from the Minister for Planning to prepare the amendment as proposed by the Melbourne Racing Club in its current form’. According to the Glen Eira Planning Scheme Amendment C60 Explanatory Report ‘The amendment is required to provide a zone which will facilitate the range of uses and design outcomes proposed under the Caulfield Mixed Use Area Incorporated Plan and to make consequent changes to local policy, the Phoenix Precinct Policy’.

439. While some concept plans have been on public exhibition throughout 2008, the MRC has yet to finalise its proposal for the site.

5.3.2 Alienation of Racecourse Reserve from public

440. The City of Glen Eira, in evidence to the Committee, highlighted concerns that the master plan and current use of the Racecourse Reserve does not adequately provide for a public recreation reserve or public park which are the original, legally prescribed purposes of the reserve.

The master plan does affect public land, as it proposes a nine-storey building on what is currently Crown land reserved for a racecourse, public recreation ground and public park. It is difficult to see how a nine-storey commercial building is any one of those three things. There also appears to be the potential for the private development to displace car parking onto the Crown land.

The legally-prescribed purposes of a ‘public recreation ground’ and ‘public park’ are not adequately provided for, and they should be. There are 345 non-race days each year, and we believe they provide ample opportunity for junior sport and equivalent active and passive recreation. Such activities should be undertaken without compromising the use of the land as a racecourse. They do not require infrastructure such as pavilions.\textsuperscript{151}

441. The Council and residents highlighted the existing lack of open space in the City of Glen Eira and neighbouring Cities of Stonnington and Port Phillip, and in particular the shortage of active and passive recreation grounds. The

\textsuperscript{151} Glen Eira City Council, \textit{Transcripts of Evidence}, 13 February 2008, p 288.
Caulfield Racecourse Reserve represents a unique large parcel of public land in the vicinity of these three municipalities.

442. The current MRC development proposal is viewed as being an opportunity to ensure the Caulfield Racecourse Reserve is able to be used by the public on non-race days as a recreational reserve and public park. Local resident and trader, Mr Frank Penhalluriack, noted as follows:

In my opinion the acceptance of this Master Plan would mean the end of a golden opportunity to turn this entire area, likely comprising some 100 Hectares, into a world’s best sporting complex. The MRC’s Master Plan would insensitively turn the northern MRC land into a high-density mass of buildings, and the centre of the reserve into a car park.152

443. Evidence also illustrates the conflict over existing use of the site as predominantly a horse racing and training venue, with the original purpose stipulated in the Crown grant of 1879 which refers to the use of the reserve for ‘racing, recreation’ and ‘public park’. This conflict of uses and existing alienation of public land was noted in supplementary evidence received from Mr Don Dunstan, Glen Eira Community Association:

Track work for horses at racecourses on Crown land, by necessity, denies the public the free use of that Crown land. Racehorses and the public safety do not mix. Shared use of Crown land for both racecourse and public – such as is the case for Caulfield racecourse - results automatically in the partial or total alienation of the public land. The right of the public to free use of the public land is denied. At Caulfield Racecourse Reserve, there exists areas of partial alienation, and areas of total alienation.153

444. The Committee questioned the Melbourne Racing Club over existing use of the site during a public hearing on 13 February 2008. The Committee, while generally supportive of the MRC’s development proposal, expressed unanimous concern over the extent to which the MRC is committed to ensure the Caulfield Racecourse Reserve is able to be used by the public on non-race days as a recreational reserve and public park.

152 Mr Frank Penhalluriack, Submission No 53, p 4.
153 Mr Don Dunstan, Glen Eira Community Association, Correspondence, 30 June 2008, p 1.
Mr THORNLEY — Let me give you the tip, gentlemen — there are four different political parties represented on this committee — five altogether — and I am going to take a wild guess that every single one of them is unhappy with the lack of public use on this very large piece of public land. I, for one, am a greater supporter of the 2030 proposal and a great supporter of higher-density development in areas like the one that you are proposing, because that is the very thing that will prevent people knocking down suburban houses and putting blocks of flats in leafy green streets. That is the very purpose of this policy, and I support it. You are trying to encourage a development that is very much in line with that policy, and I am encouraged to see that.

……….there is no real evidence to me — and I suspect to others here — that the club has any real commitment to finding ways of utilising that very large amount of land for a greater level of public use. I would encourage you to think about that, because if the club is unable to demonstrate that, then I think there would be broad public consensus to find more draconian methods to ensure that occurs or to hand over custodianship of some portion of the park to others.  

5.3.3 Role of Caulfield Racecourse Reserve Board of Trustees

445. In its second interim report tabled on 6 December 2008, the Committee highlighted concerns over the arrangement of the Caulfield Racecourse Reserve Board of Trustees.

446. The Crown Grant established fifteen Trustees to govern the use of the land. The Trustees are appointed by the Governor-in-Council based on:

- Six nominees of the Melbourne Racing Club,
- Three Councillors of the Glen Eira City Council, and
- Six nominees of the State Government.

447. The day-to-day management of the Crown Land is in the control of the Melbourne Racing Club under delegation from the Trustees.

448. Evidence indicates the Trustees’ practice has been to meet once a year (in March). Their meetings are not open to the public, minutes of meetings are not made public nor is there any public release of financial statements.

449. During the February 2008 public hearings on this issue, the Glen Eira City Council expressed some frustration over encouraging the Trust and MRC to increase public use and access to the Reserve to the public. Part of this frustration was an inability to deal with and gain access to the Board of Trustees:

Mr NEWTON — Look, we have got nothing to show for our endeavours. We cannot point to any improvement that has been made as a result of our efforts, and I guess that is the most important thing. We have written various letters and that sort of thing, but they have not yet made any changes that benefit anybody on the ground. Part of the issue is that there are two bodies to deal with. There is the racing club, which has been in occupation for a long time, and there are the trustees. The trustees have one meeting a year, and I would have to say that that is an issue; if anybody wants to actively discharge responsibilities, it is difficult to deal with a group that has one meeting a year. But we are continuing to put views to the racing club and to the trustees and we will keep batting for the residents of Glen Eira and further afield.\footnote{Glen Eira, above n 150, p 290.}

450. As six of the fifteen trustees are nominees of the MRC, several of the State Government nominees have a background in racing, and the day to day management of the reserve has been delegated to the MRC by the Trustees, it is no real surprise that the interests of racing predominates. However, the Committee was concerned that evidence from the Trustees themselves illustrates the complete lack of appreciation for the original purposes of the Reserve as a public park and the responsibility to uphold that purpose with equal status as horse racing.

Ms PENNICUIK — So there is a fair bit of racing experience on the board of trustees?

Mr REYNOLDS — I think if it is mainly used a racecourse, that is probably a good thing.

Ms PENNICUIK — It is mainly used as a racecourse. That is the problem, isn’t it?

Mr REYNOLDS — It has got to be unless you want the horses to gallop all over people.

Ms PENNICUIK — I think that is the issue I was trying to point to. The community’s view is that racing has the majority of the focus — by a long way — and public use has by far the minority.\footnote{Caulfield Racecourse Reserve Trustees, \textit{Transcript of Evidence}, 13 February 2008, p 302.}
RECOMMENDATION 5.8
That the Government investigate:

- the history, membership structure, responsibilities and current arrangement of the Caulfield Racecourse Reserve Board of Trustees, particularly in relation to its duty to uphold not just horse racing, but all the purposes of the reserve in the original Grant;

- the purpose to which money raised by horse racing has been used; and

- ways in which the Government can ensure that the Board of Trustees operates in an open and transparent manner and in accordance with the terms of the Grant.

RECOMMENDATION 5.9
That the Master Plan for the Caulfield Racecourse Reserve redevelopment be the subject of wide public consultation incorporating the municipalities of Glen Eira, Stonnington, and Port Phillip.

RECOMMENDATION 5.10
That the Minister for Planning strongly consider appointing community members and/or people with park and recreation expertise as nominees of the State Government to the Caulfield Racecourse Reserve Board of Trustees to provide a balanced representation of interests and expertise.

RECOMMENDATION 5.11
That the day-to-day management of the Caulfield Racecourse Reserve, by delegation from the Trustees to the Melbourne Racing Club, be reconsidered.

5.3.4 Current Arrangements to enhance public use of the Racecourse Reserve

451. Following on from concerns raised in the public hearings on 13 February 2008, the Melbourne Racing Club wrote to the Committee reporting on progress made in relation to public use and access to the Reserve and of an agreement obtained with the Glen Eira Council of use of the centre of the Racecourse Reserve.

452. The Committee understands that the Melbourne Racing Club has:

- Investigated options in relation to the Queens Avenue boundary. The maintenance of a boundary fence has been identified as being essential for the safe management of horse racing and training. Security concerns and the embankment behind the fence limit any benefits of replacing the existing ‘closed’ fence with an ‘open’ palisade type fence.
• Taken action to clearly define and publicise public access to the reserve. This has included the installation of new signage at entry points, advertising in local papers and distributing brochures to the surrounding area.

453. On 1 July 2008, the Glen Eira City Council adopted a joint communiqué between the Council and the Melbourne Racing Club recommending to the Trustees as follows:

• The prospect for horse racing at Caulfield is that it will continue for the medium term and thereafter with full consultation with the whole of the Racing Industry and the Caulfield Trainers, a decision is expected to be made to relocate training to a more suitable locality away from the metropolitan area.

• The MRC and Council support the Industry initiative to relocate training from the Caulfield Racecourse and desire this to happen as expediently as can be facilitated by the Industry. The MRC will provide Council with an annual update on progress.

• After training at Caulfield Racecourse has been relocated, the MRC and Council agree that the land now occupied by the stables in the south-east corner of the Caulfield Racecourse Reserve will, subject to approval by the Trustees, be hatched from the Caulfield Racecourse Reserve and be incorporated into Glen Huntly Park under the responsibility of Council.

• Subject to approval by the Trustees of the above points the MRC and Council agree that ball sports should be located outside of the Caulfield Racecourse Reserve in Glen Huntly Park and that the Centre of the Caulfield Racecourse Reserve (also known as the Flat) should be maintained and improved as passive public open space. The improvements are expected to be undertaken in 2009-2010 and will include the enhanced pedestrian access through the vehicle tunnel located at the Glen Eira roundabout, extended disabled access in the Centre form the northern access through the Guineas tunnel, a walking track, jogging track, opportunities for fishing, seating, a BBQ area, landscaping and access to toilets.

• The Community will be encouraged and welcome to use this area as passive public open space, subject to the Regulations of the Caulfield Racecourse Reserve and restrictions for the purpose of running race meetings, training and major events.
FINDING 5.14
The Caulfield Racecourse Reserve profits to the Melbourne Racing Club have been disproportionately directed to racing users, with inadequate provision for use of public park and recreation users as required by the original Grant.

RECOMMENDATION 5.12
That the Melbourne Racing Club’s recent report relating to the Caulfield Racecourse Reserve fencing boundaries be publicly released.

RECOMMENDATION 5.13
That the Caulfield Racecourse Reserve Trustees direct a substantial amount from the profits made by the Melbourne Racing Club over many decades to the provision of public park and recreational facilities, including promotion of the public use of these facilities as recompense to the community.

RECOMMENDATION 5.14
That the Government support the joint communiqué between the Melbourne Racing Club and the Glen Eira City Council to the Caulfield Racecourse Reserve Trustees, bearing in mind that further public consultation is needed with respect to the future use of public open space within the centre of the Caulfield Racecourse Reserve.

5.4 Proposed Southern Ocean Beach House development in Port Campbell

454. The Committee’s previous interim reports noted evidence received in relation to the proposed Southern Ocean Beach House development at the Port Campbell headlands.

455. The actual public land component of the proposed development is minor and relates to the potential loss of four car parking spaces at the fisherman’s carpark at the headlands and some further land at the historic Public Park War Memorial Reserve to cater for bus access.

456. However, the major concerns put to the Committee focused on the proposed development’s impact on the surrounding public land. Specific concerns relate to:

- public safety and the geological stability of the surrounding area;
• the visual and other impacts upon the surrounding public land area including the War Memorial; and
• possible impacts on future access for commercial fishing vehicles.

457. The proposal for the Southern Ocean Beach House development includes 130 rooms, 10 shops and a 200 seat restaurant. The Committee received evidence that the scale of the development is not consistent with the current Design and Development overlay, which seeks to preserve and maintain Port Campbell’s low scale village character.

458. The developer of the Southern Ocean Beach House sought an extension to its permit as works did not commence in accordance with the original permit. The Corangamite Shire Council subsequently refused this request and the developer appealed this decision to the Victorian Civil and Administrative Tribunal (VCAT). On 25 July 2008, VCAT extended the applicant’s building permit until March 2010.

5.4.1 Geological Instability of Site

459. In its December 2008 Interim Report, the Committee noted that while it does not have expertise of a geological or technical nature, it wished to highlight the urgent need for the Victorian Government to investigate and assess the geological stability of the Port Campbell headland. Serious concerns were raised in evidence, including the independent assessment of a geotechnical engineer, 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.

460. The National Trust has classified the Port Campbell headland, bay and foreshore, and its accompanying features, which are of archaeological, historic, social, aesthetic and scientific importance, in its register as of ‘State’ significance.

461. The Committee has received recent correspondence from the Port Campbell Community Group advising that an Environmental Effects Statement (EES) has not been required for this development despite:

• the fragile nature of the surrounding environment, supported by numerous geotechnical reports;
• the failure of the project to comply with the current planning guidelines for coastal developments in the area; and

• considerable community interest in the site/development.

5.4.2 Role of State Government

462. The Committee notes it is the role of the Department of Sustainability and Environment to:

• protect the coast and Crown/public land from and adverse impacts of private development impact;

• ensure any consent for use and development of Crown land by a private development does not impact on the coast or coastal uses.

463. Notwithstanding the above, the local community has expressed frustration and concern over the Victorian Government’s reluctance to intervene in the process to ensure any development has minimal impact upon public risk and on the stability of the internationally significant coastline.

464. The Port Campbell Community Group wrote to the Committee in July 2008 advising that:

• Parks Victoria had denied FOI access to geotechnical tests of the Port Campbell headland on the grounds that they are internal working documents including opinions, advice and recommendations and to release would be contrary to public interest.

• Department of Sustainability and Environment has also denied the Group access to FOI documents regarding the consent for use and development of public land for private enterprise on the Port Campbell headland.

465. The Committee also expresses concern at the refusal of the Government to provide input into this issue during the course of the Inquiry. The Committee invited the Department of Sustainability and Environment to give evidence at the Port Campbell hearings, however the invitation was declined. At a hearing on 19 November, the Committee further attempted to obtain the Department’s assessment of the proposed Port Campbell development. However, 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.
Nevertheless, the Committee acknowledges the 30 June 2008 evidence from the Minister for Environment and Climate Change that his office had recently met with concerned groups over this issue.

The Committee understands the Department of Sustainability and Environment is yet to determine whether it will agree to extend the consent for use and development of Crown land following VCAT’s decision to extend a building permit.

The Port Campbell Community Group has also recently requested the Minister for Planning and Minister for Environment and Climate Change requesting the Government extend consent for use and development of the Crown land.

**FINDING 5.15**

The proposed development of the Southern Ocean Beach House will have significant visual impacts and may have serious geological stability and public safety impacts on the surrounding area. Evidence suggests the proposal may not conform to the local planning scheme that aims to preserve the low rise and village character of the Port Campbell township. The size and scale of the proposed development will impede views from the town to the headland and vice versa.

**FINDING 5.16**

The lack of cultural, social and heritage assessment before the Department of Sustainability and Environment consent for use and development of Crown land (Public Park War Memorial Reserve) should be revised. Any extension to the consent to any future use and development of Crown land should take into account the significance of the headland and port to the State of Victoria.

**FINDING 5.17**

It was difficult to determine which Government department or agency has responsibility for the geotechnical stability and public liability issues relating to the Port Campbell headlands.

**RECOMMENDATION 5.15**

That the Government undertake a geotechnical assessment of the stability of the Port Campbell headland given the history of collapses of nearby coastal, geological formations close to Port Campbell.
RECOMMENDATION 5.16

That the Government notify the relevant authorities that the development of the Southern Ocean Beach House not proceed until the geological assessments are complete.

RECOMMENDATION 5.17

That the Department of Sustainability and Environment be more proactive in assessing the potential impacts of developments adjacent to public land on that land and make recommendations to planning authorities.

5.5 Devilbend Reserve

469. 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.

470. 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.

471. 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 highlights 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.

472. Arguments for the retention of Block 1 included its ability to be used for a wide range of people intensive recreational activities and a visitor information centre. This would mean that the main reserve could have been retained as a nature reserve.

Mr TURNER — The first conclusion is that the reserve has the scope to offer a wide range of recreational and educational activity. There is a strong feeling that the reserve should not be closed off but should be made available to as many people as want to take advantage of it. But clearly that has to be controlled in order that priority no. 1, the preservation of the wildlife habitat, is maintained.157

473. 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.

474. The Committee’s ability to obtain information about this site was limited by the Government’s interpretation of the Committee’s terms of reference, who suggested that this site was outside the scope of the Committee’s inquiry. As noted earlier in this Chapter and in Chapter 1, the Government used a narrow interpretation of public land to avoid giving evidence and providing documents in relation to key public land sites including Devilbend, Kew and Port Campbell. Following Parks Victoria hosting a site visit for the Committee on 27 September 2007, the Attorney-General’s subsequent intervention limited further input by the Government into this issue.

475. 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, 157

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157 Devilbend Landcare Group, Minutes of Evidence, 27 September 2007, p 68.
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. (Refer to previous discussion in Chapter 1)

476. The Committee highlighted this issue in its December 2007 interim report and noted with concern at that stage that the State Government was proceeding in attempting to sell Block 1 through an as yet uncompleted expression of interest process.

477. Despite concerns raised by the local community and without regard to the Committee’s on-going investigations and tabling of a final report, the Department of Treasury and Finance finalised the sale of Block 1 on 13 February 2008.

478. While the Committee shares the disappointment of the local community over the Government’s decision to sell the 40 hectare parcel of land; looking forward, it is important that the proceeds from the sale be used to contribute to the establishment costs of the Devilbend Natural Features Reserve.

479. The Committee notes this matter was recently raised in Parliament when the Minister for Environment and Climate Change responded to a question from Mr Edward O’Donohue as follows:

The Government is committed to using the proceeds of sale to conserve, restore and develop the reserve.

Parks Victoria has appointed a Devilbend Reservoir Advisory Group to provide direction and advice in relation to the reserve. The expenditure of the land sale proceeds will not commence until the completion of the management plan as it is this document that will determine the blueprint for the reserve’s conservation and development. Parks Victoria proposes to release for public comment a draft plan in September 2008 and to finalise the plan by March 2009. Therefore, it will be another 12 months before any major changes to the reserve are apparent. The plan will present a strategy for restoration of the reserve.  

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FINDING 5.18

The Committee highlights its concern over the process whereby the Government proceeded to sell for private development the approximate 40 hectare parcel of land attached to the Devilbend Reserve, a site of significant environmental value. The Committee does not support the practice of selling public land in order to raise funds for the conservation and development of other public land.

FINDING 5.19

The Government’s view that the 40 hectares of land was of no ecological significance, and so was separated from the rest of the Devilbend Reserve site, was in conflict with expert evidence provided to the Committee that it is an integral part of the catchment area.

FINDING 5.20

The Committee finds that the sale of the 40 hectares appears to have been driven entirely by financial considerations and that the significant ecological and conservation values of the land have now been lost. This case study is another example of long term loss for short term gain.

FINDING 5.21

The Committee understands the Government declared that it will inform the community as to how it intends to spend the proceeds from the sale of the 40 hectare parcel of land at Devilbend Reserve.

5.6 Other Case Studies

5.6.1 Creeks and Rivers

480. The Committee received written submissions and oral evidence in relation to public land and parks along a number of creeks and rivers in Melbourne, including, the Yarra River, the Maribyrnong River, Merri and Edgars Creeks, Gardiners Creek and Mullum Mullum Creek.

481. The land along these corridors is important for recreational, social and ecological purposes. These uses are only likely to become more important into the future. Parks along rivers and creeks also act as corridors for wildlife. The protection of land abutting rivers and creeks is complicated by the fact that much of the land is freehold and there is no single Act covering this land.

482. One of the objectives of the Melbourne 2030 policy is the maintenance of existing public land immediately adjoining land along rivers and creeks. The Committee received evidence suggesting that this objective was not being
achieved for a number of reasons, including a lack of coordination between Government Agencies when disposing of land.

483. The Committee received evidence from a number of witnesses in relation to the proposed sale by VicRoads of surplus land in Coburg adjoining the Merri and Edgars Creeks. For the last 30 years this land has been used as public open space with maintenance costs covered by the local Council.

484. Although Melbourne 2030 proposes to extend the Merri Creek Park to Craigieburn, it would appear that the integrity of this park would be significantly and irrevocably compromised if the sale of the surplus VicRoads land in Coburg were to proceed.

485. Under the Melbourne 2030 policy, Coburg is designated as an activity centre, which entails increasing population densities in this suburb. As a result the Committee anticipates that there will be a greater demand for public open space.

486. The Moreland City Council advised the Committee that it currently has a deficit of open space in many areas, while the municipality as a whole as one of the lowest percentages of open space across metropolitan Melbourne.

487. The VicRoads land in Coburg is approximately 10 hectares and represents about 50 percent of the total open space in this area. This land is also subject to flooding, which raises questions concerning its suitability for alternative uses.

488. Further, the Committee received evidence that this land is adjacent to two large housing developments on the former Pentridge and Kodak sites. It is anticipated that these developments alone will be responsible for a decline in the ratio of open space to population.

489. The Committee received evidence that increased public open space will be required to address increases in housing density to limit the urban sprawl.

490. The Melbourne 2030 Parklands Code requires the evaluation of environmental and recreation value of surplus land prior to any decision to

159 Ms Anne Sgro, Submission No 26.
sell it. The Committee understands that to date, if this assessment has occurred, it has not been made public.

491. While it is Government policy to sell surplus land at the market value, there is no legislative obligation to do so. It has been suggested to the Committee that the adherence to this objective fails to take account of other Government policies, such as Melbourne 2030.

492. In the current environment, local governments face difficult choices regarding the provision of open space. While Melbourne 2030 seeks to protect and better utilise public open space, the cost of providing and maintaining this is being shifted to local government. The Committee received evidence from Moreland, Stonnington and Darebin Councils highlighting the difficulties of providing open space when it has to be purchased at market rates.

...the ability of the Council to acquire land for public use is very constrained. Where public land is offered at market value it is often beyond the resources of this Council and cannot be justified to represent good value for money as public use.

493. For example, the Moreland Council was offered the land deemed surplus by VicRoads referred to earlier for $9.5 million. It was suggested to the Committee that this is a significant sum of money for a local council with a total revenue of approximately $102 million (2007-8), but not such a significant sum for the State Government with a total revenue of approximately $37,497 million (2007-8).

494. The Committee received evidence that the public does not understand purpose or need to sell land either between different levels of government or between different government agencies.

I suppose as a taxpayer I feel in a sense that I own that land anyway. I have bought it.

495. Given Government resources are finite, questions were also raised with the Committee concerning whether the sale of land either between different levels of government or different government agencies is in the public’s best interest. For example the former North Maribyrnong Defence site was acquired from private ownership in 1908 by the State Government and then gifted to the Commonwealth Government, who is now negotiating to sell this land back to the State Government. If the negotiations are successful, the
people of Victoria will have paid for this land twice. The suitability of this land for private purposes, and therefore its value, has been questioned given it is contaminated with hazardous toxic substances.

496. It has been suggested to the Committee that given the investment by the local Councils in facilities and maintaining the land that it should be gifted as parkland or sold at a reduced price to be set aside as parkland.

497. Planning was also raised as an issue in relation to public open space along creek and river corridors. For example creeks and rivers frequently act as boundaries between different local government areas. This means that different planning codes may apply on different sides of the creek or river. Further, responsibility for these linear parks requires a more coordinated administration.

498. The Committee notes that Moonee Valley Council has a substantial amount of open space along the Maribyrnong River, opposite the former North Maribyrnong Defence site. The Council advised the Committee that both it and the City of Maribyrnong would like to see a significant portion of this site retained as public open space and linked with pedestrian bridges. Despite a request from the City of Maribyrnong that 50 percent of the site be retained as public open space, the Committee understands that the preliminary site master plan prepared by VicUrban has not incorporated this request.

499. The Committee received evidence from residents concerned about the scale of development of Deakin University’s Burwood campus, which has developed around the Gardiners Creek Reserve. The reserve is now at the heart of the University’s campus.

500. The Committee notes that while Gardiners Creek Reserve is a public park, the University undertakes some maintenance tasks.

501. Concerns arise from the fact that Deakin’s Burwood campus has been designated as a Public Use Zone. This means that it does not have to submit plans to local government. As a result the University has proposed to build some high rise buildings in close proximity to the parkland and rising to a significant height alongside the park, i.e., not a scaled development.
502. The Committee notes another contradiction in the *Melbourne 2030* policy. Although this policy encourages buffer zones between activity centres and residential and park areas, this same policy requires this site to be densely developed for education purposes.

**FINDING 5.22**

The Committee is concerned that although Deakin University has legitimate interests and plays an important educational role, the interests of local residents and the protection of public land has not been a key priority with respect to the University’s involvement in development around the Gardiners Creek Reserve.

5.6.2 Coastal Developments

503. In addition to the proposed development at the Port Campbell headlands referred to earlier in this Chapter, the Committee received evidence on several coastal and harbour developments that are inconsistent with the Victorian Coastal Strategy and may represent a further loss of public land and open space.

504. The Committee’s evidence illustrated how local coastal strategies have been developed without due consideration to local planning frameworks and community input, and how in turn, these local strategies may not necessarily be consistent with the overarching Victorian Coastal Strategy.

505. In its first interim report, the Committee noted local community concerns in relation to the proposal to build a five star hotel/visitor accommodation and marina at Apollo Bay. The Committee understands that this proposal would involve the relocation of the golf course, which is on public land on the foreshore, and the possible deepening of the harbour floor. While the project aims to integrate the harbour with the town, concerns were raised in relation to possible alienation of the foreshore and harbour precincts if the project were to proceed. Evidence also noted a lack of transparency in the planning process and concerns that the development appears to be at odd with the Coastal Strategy.

506. The redevelopment of Queenscliff Harbour was presented to the Committee of an example of how the development of a safe harbour could result in the loss of public open space. Parks Victoria proposed to redevelop the Queenscliff Harbour in three stages:
• Building of new ferry access roads and services,
• Expansion of harbour, installation of new pontoons and boatyard facilities,
• New retail shops and carparking area.

507. The Committee received evidence that the development has resulted in the loss of public assets, including the foreshore, traditional moorings, the iconic working slipway was demolished for a carpark, and a new shopping strip has been created and competes with the traditional retail strip centred on Hesse Street.

508. Further evidence was received in relation to the proposal by Parks Victoria, in partnership with a number of agencies and stakeholders, to develop a safe harbour in Portarlington. The concerns relate to the manner in which this project will be integrated with the foreshore reserve and existing township. The foreshore is currently widely used by family groups and tourists. There has been concern raised that this development will result in the loss of large areas of parkland for infrastructure, industry, shops, accommodation and other related marina infrastructure.

509. The Committee received limited evidence from the Victorian Coastal Council, in a public hearing on 21 April 2008, and noted the various community concerns should be taken into consideration as part of the current review of the 2002 Victorian Coastal Strategy.

510. The Committee is disappointed the Victorian Coastal Council failed to provide full and independent evidence to the Committee. The Committee notes the Victorian Coastal Council has a role that should include independent advice to Government on decisions on coastal policy.

511. The Committee sought information from the Chair of the Victorian Coastal Council on any advice the Council had provided to the Minister for Environment and Climate Change in relation to the coastal policy or individual coastal sites identified during the Committee’s Inquiry, including any advice in relation to the Ramsar wetlands site.

512. The Committee is disappointed that the Coastal Council refused to provide such advice claiming the matters ‘fall outside the Committee’s terms of reference’. No further explanation was provided to explain in what way the
matters were deemed to be outside the scope of the Committee’s Inquiry, particularly given the evidence received on these issues from concerned communities.

5.6.3 Camberwell Railway Station

513. The development within the precinct of historic Camberwell Railway Station is another example of passionate community concern, including the holding of public rallies, over the Government’s support for a commercial development that will further erode valuable public open space.

514. The State Government (VicTrack) owns Camberwell Railway Station and has appointed Tenterfield as the preferred tenderer to develop the airspace above the Station. The Committee attempted to seek VicTrack’s views on this development during a public hearing, however is disappointed to report that VicTrack refused to answer questions on these matters.

515. The Government, through the Melbourne 2030 strategy, has nominated Camberwell Junction as a Principal Activity Centre, meaning the area is seen as having the potential to grow and accommodate increasing population density.

516. In 2003 the Boroondara Council established a working group comprising members of the community, the State Government and the Council to develop an Urban Design Framework (UDF). In May 2005 the Council formally considered the UDF and resolved to hold further discussions with the State Government about what was appropriate for the site. Consequently the Government created a working group to assess the financial viability of the various development options, comprising the Council, the Department of Sustainability and Environment, the Department of Infrastructure, VicTrack and a communications consultant. This group has not met since May 2007 when Boroondara Council, acting on a finding of the Heritage Council, applied to protect the area with a heritage overlay. In 2007, the Council also sought to change the overlay boundary to change the scale of the development, but this change was not approved by the Minister for Planning, and the development was able to proceed unchanged.

517. Tenterfield’s development application consisted of a mix of office, retail, residential, restaurants, cafes and carparks, housed in 3 and 6 storey
buildings and a 3 storey podium building with a further 3 storeys. In April 2008, the Boroondara Council refused this development application on 31 grounds. The developer believed the Council’s concerns did not directly relate to the project and appealed this decision to VCAT. In July 2008, it was reported that VCAT had given tentative approval for the 6 story restaurant, office and apartment building in Cookson Street. The Committee understands that to date VCAT have not issued a formal decision.

518. Evidence with respect to this development illustrates widespread community concerns relating to the loss of public open space, coupled with increasing population densities. Given the significant community concerns over this proposal, it is disappointing that VicTrack refused to give evidence on this mater in its public hearing appearance before the Committee.

519. The Boroondara Council advised the Committee that they were not opposed to either developing the Camberwell Station site, or increasing population densities within the municipality generally. However, they stated that the area around the Camberwell Station already had a high population density and that there were other areas within Boorondara that are better suited to higher density residential development.

520. The Council’s evidence before the Committee highlighted the following major concerns with the process surrounding the proposed development:

- The state government has failed to use the opportunity provided by the development of the land to assist in the implementation of Melbourne 2030.

- The government has narrowly interpreted its own policies to justify a particular development outcome, rather than giving consideration to the impacts of other initiatives within Melbourne 2030 in relation to good design, amenity and sense of place.

- The development of the site should not proceed exclusively as an opportunity to develop the land and the airspace around the Camberwell railway station for the greatest financial return without having regard to the surrounding built form, car parking, heritage values and the community’s values and aspirations.

- The state government has failed to act in a coordinated, participatory and transparent manner in respect of the disposal of this public asset,
nor has it recognised the custodial role that it plays in the management of this public asset.  

521. There have been concerns raised that the manner in which the Melbourne 2030 policy is being applied, could ultimately undermine its objectives by failing to protect Melbourne’s ‘good’ elements and encourage community building. There is a view in the community that the Melbourne 2030 policy is being used to justify particular developments rather than regarding the impact of the development in relation to the broader objectives of design, amenity and space.

**FINDING 5.23**

The Committee supports the Boroondara City Council’s criticisms of the Government’s management of the proposed Camberwell Railway Station redevelopment project.

**RECOMMENDATION 5.18**

That the Government publicly disclose the full contract terms entered into with Tenterfield in relation to the Camberwell Railway Station redevelopment.

**RECOMMENDATION 5.19**

That the development of a Government register and audit of public land (referred to in Chapter 2) include a full audit of all VicTrack land holdings.

**5.6.4 Royal Park**

522. The Committee received evidence in relation Royal Park. While still a substantial area of public open space, it was suggested to the Committee that Royal Park is being developed at its edges to such an extent that approximately one third of the original park has been lost, either through the sale, alienation or development of land. The park has been used for various activities, including the Children’s and the former Psychiatric Hospitals, a rehabilitation centre, a juvenile detention centre, a TAFE college, the Hockey and Netball Centre, the Commonwealth Serum Laboratories, and most recently the former Commonwealth Games Village.

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160 City of Boroondara, Transcript of Evidence, 21 April 2008, p 571.
The former Commonwealth Games Village, now known as the Parkville Gardens residential development, occupies the former Psychiatric Hospital site. This development of this site occurred pursuant to Commonwealth Games Arrangements Act 2001 (Vic), which is currently jointly administered by the Ministers for Planning, Sport Recreation and Youth Affairs and Major Projects. Under section 48B of this Act, the responsibility of the Minister for Planning, abrogates the normal legislative requirements relating to the development of public land. This limited the opportunities for public involvement in the development of the site, or consideration of the impact of the loss of rare inner city land. This remains in force.

The development of Parkville Gardens has not only resulted in a loss of public space and facilities, but also a significant loss of trees. It has been estimated that only 13 of the 1970 mature and pre-European settlement trees have been retained following the development. Additionally buildings of historical significance, such as the laboratories of Dr John Cade, have been removed from the site. Other buildings such as the Federation Queen Anne style hospital buildings, widely regarded as the finest example of this type of architecture and which were restored at great expense from the public purse, have been subdivided and sold by the developer for apartments.

This issue was raised with the Committee to highlight the need for greater protection of public land and significant public assets and greater scrutiny of uses of public land, particularly when there is no financial benefit to the State.

Werribee Zoo

The Committee received correspondence concerning the proposed redevelopment of the Werribee Open Range Zoo. While the Committee supports the Victorian Government's subsequent recent decision to reject the proposal for the theme park on the site, it nevertheless wishes to highlight the concerns raised by the community over this proposal.

The Werribee Open Range Zoo site forms part of a larger parcel of land purchased by the Government in the mid-1970s to be used for various public purposes. The site has been broken up into four precincts, which in addition to the Zoo, are the Werribee Park Mansion (including the Victorian State Rose Garden), the National Equestrian Centre and the Werribee Park Golf Course.
528. In addition to its capital value, the site has significant cultural, historical and recreational value, particularly to people in the western suburbs.

The zoo itself is the only large recreational area in the western metropolitan area where families can have a peaceful and relaxed activity for an extended period of time without a great deal of cost, and without the noise of things like the sporting complexes around.\(^{161}\)

529. The proposed siting of a theme park on public land currently operating as a zoo attracted significant public opposition. The Committee notes that two petitions opposing this development, and bearing a total of 8130 signatures, were tabled in the Legislative Assembly on 27 May 2008 and 12 June 2008.\(^{162}\)

530. There were two main concerns expressed to the Committee in relation to this project, a lack of transparency surrounding the consideration, and the appropriateness of the project for the site. These concerns included the impact of the development on both the physical site and on the welfare of the animals, to the appropriateness of ‘gifting’ public land on a 99 year ‘peppercorn’ lease to a private entity for commercial gain.

531. The Committee sought details from the Minister for Environment and Climate Change of minutes arising from the interdepartmental committee established to consider the proposal. However, the Minister refused to provide these documents, which would have provided further insight into the Government’s approach to the development.

**FINDING 5.24**

The Committee believes it would be beneficial if deliberations of the interdepartmental committee established to review the Werribee Zoo proposal were released publicly.

### 5.6.6 Wantirna Triangle

532. The Committee received written submissions in relation to public land within the ‘Wantirna Triangle’, the area bounded by Mountain Highway, Boronia Road and Stud Road, and which contains over 1,000 residents.

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533. The written submissions referred to the need to retain a former school oval at 54 Kingloch Parade, Wantirna, as public space. There is a real need for open space in the area as it has approximately 1.37 hectares of open space per 1,000 people, well below the State Government’s recommended 9 hectares of open space per 1,000 people.

534. Prior to the election in 1999, the then Coalition Government had promised that the school oval would be transferred from the Department of Education to the local council to be used as an open recreational space. Following the election, the incoming Labor Government did not undertake this action.

535. The local community had long fought for the retention of this land as open space, with a proposal from the Office of Housing to build 15 single story units on the site being appealed to VCAT. Although it was reported in the Knox Leader, that the proposal was dropped, the site has subsequently been used to build 25 units.

536. While the Committee recognises there is a great need for public housing, it also recognises that there is a great need for public open space, especially where there is a clear lack of it, given increasing population densities.

537. There is a concern that the increase in public housing is not adequate compensation for the loss of the last significant area of local open space, in an area bounded by major arterial roads and with limited public transport. The Committee notes that the loss of public open space may have negative impacts on the physical and emotional well being of the residents in the affected area due to decreased amenity and recreational opportunities.

5.6.7 Lonsdale Lakes Development, Geelong

538. The Committee received evidence on the potential impact on public land, of a residential development on private land.

539. The land in question forms a natural corridor between the internationally recognised Swan Bay and Lake Victoria wetlands. It is not listed on the register of important wetlands, in part through error and because it is on private land. It was previously the site a shell grit mine, however in the 1980s was proposed for a residential development. Of the six stages proposed,
Stage One, consisting of 150 homes was the only one completed. Plans for the site now include up to 770 homes.

540. It has been suggested that in addition to forming a vital part in the chain of wetlands in the area, there would be numerous technical, economic and ecological impediments to building on the site. These impediments include that the land is some of the lowest land on the Bellarine peninsula and is subject to a tidal waterway. The Committee understands that the Department of Sustainability and Environment has queried the zoning of the land given the impact of climate change in relation to the site. Further the current development plan involves substantially remodelling the site through the relocation of a 5 to 6 metre high sand dune.

541. The intense residential development on the site, surrounded by other key wetlands of international significance could adversely impact on these surrounding areas through the interruption of migratory patterns for water birds.

**FINDING 5.25**
The Committee has reservations over the development proposed at the Lonsdale Lakes. Evidence to the Committee indicates the proposed development could have adverse impacts on public lands adjacent to the development, particularly the integrity of Swan Bay and may contravene Australian’s obligations under the Ramsar Convention on Migratory Birds.

**5.6.8 Chiquita Park**

542. The Committee received evidence in relation to the loss of public-open space resulting from the sale of Crown Land controlled by the Commonwealth, in particular the former Chiquita Park site – an 81.5 hectare parcel of land in Mentone.

543. Chiquita Park was one of the last remaining pieces of coastal heathy woodland. It had been owned by the Department of Defence and rented to the local council since the 1950s to use as a park.

544. The Commonwealth Government decided to sell this land, and in 1999 offered it to the local council for $2.9 million dollars, which the Council could not afford. The land was later sold two years later to a private company for $2.23 million dollars, to build a nursing home on the site.
545. The land was initially sold unzoned. It has been suggested to the Committee that the lesson from Chiquita Park should be that the planning panel should be established and the zoning determined prior to any sale of public land. Once the land has passed to private ownership in the expectation of subdivision, it is difficult to have the land zoned for public open space.

546. It is also an example of the lack of any clear and reliable process between federal, state and local government levels, where local government can retain a site of local, social and conservation value.

Committee Room
10 September 2008
APPENDIX 1
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, A.M., Mornington
6. Boroondara Residents’ Action Group
7. Maribyrnong Residents 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 of Australia (Victoria)
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
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<tr>
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<tr>
<td>71</td>
<td>City of Stonnington</td>
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<td>72</td>
<td>Mr Michael &amp; Ms Kerry Shanahan, Greensborough</td>
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<td>73</td>
<td>Ms Margaret Ryan, North Caulfield</td>
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<td>74</td>
<td>Mr Brian Duvoisin, Nunawading</td>
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<td>Mr Peter Edhouse, Hastings</td>
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<td>Mr Peter Dickinson, Marysville</td>
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<td>Mrs Elva Mattock, Euroke</td>
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<td>Mrs Lucia Morham, Euroke</td>
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<td>Mr E.G. Stuckey, Apollo Bay</td>
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<td>Ms Ronti Basiri, Mordialloc</td>
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<td>Mr Jim Lowden, Donvale</td>
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<td>Mr Matt Sheppard, Greensborough</td>
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<td>Friends of Yarra Valley Parks</td>
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<td>Dr Svetlana Ryhikh, Greensborough</td>
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<td>Venus Bay Wetlands Project</td>
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<td>Mr Neil Longmore, Gellibrand River</td>
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<td>Mr Paul Rumpf, Parwan</td>
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<td>Carlton Residents' Association and Carlton Gardens Group</td>
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<td>Toorak Village Residents' Action Group Inc</td>
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<td>100</td>
<td>Municipal Association of Victoria</td>
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<td>City of Greater Dandenong</td>
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<td>102</td>
<td>Mr Andrew Hay, Mentone</td>
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<td>103</td>
<td>Construction Material Processors' Association Inc.</td>
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<td>104</td>
<td>Mr Frederick Olsson &amp; Mrs Beverly Olsson, Park Orchards</td>
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<td>105</td>
<td>Warnambool Golf Club</td>
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<td>106</td>
<td>Ms Diane Brooker, Greenborough</td>
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<td>107</td>
<td>Ms Marina Lewis, Gellibrand River</td>
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108. Dr Marion Manifold, Camperdown
110. Mr Greg Alabaster, Moorabbin
111. Malvern East Group
112. Unchain St Kilda
113. Queenscliffe Community Association Inc.
114. Mr Geoffrey Gordon, Mt Eliza
115. Mr Paul Cleaves, Wantirna
116. Ms Julianne Bell, Secretary, Protectors of Public Land Victoria Inc
117. Friends of Chicquita Park
118. North & West Melbourne Association Inc
119. Save Albert Park Inc.
120. Vegetable Growers’ Association of Victoria Inc.
121. Mr Kevin Chamberlin, President, Protectors of Public Land Victoria Inc
122. Mrs Dianne Ashton, Hastings
123. Ms Heidi Victoria M.P., State Member for Bayswater
124. Glen Eira Community Association
125. City of Darebin
126. Royal Park Protection Group Inc
127. City of Boroondara
128. Dendy Park Association
129. Save Barwon Heads Alliance Inc
130. Ms Gila Schnapp and others, Diamond Creek
131. Save Our Suburbs
132. Nillumbik Shire Council
133. Friends of Caulfield Park
134. Cr Rosemary West, Edithvale
135. Green Wedges Coalition
136. Mr James Hay, Glen Iris
APPENDIX 2
List of Hearings and Witnesses

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**
  Ms Sophie Segafredo, Manager, Strategic Planning and Environment

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

- **Mr Julie Brazier, local resident**

- **Port Campbell Fishermans’ Association**
  Ms Marion Gordon, Secretary

- **Protectors of Public Land Victoria Inc**
  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 and 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
• The Hon. A.J. Hunt, A.M, 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

13 DECEMBER 2007 – PARLIAMENT HOUSE

• Tourism Victoria
  Mr Greg Hywood, Chief Executive
  Mr Brad Ostermeyer, General Manager, Tourism Investment

• Mirvac Group
  Mr Richard Altson, Director, Property Acquisitions

30 JANUARY 2008 – PARLIAMENT HOUSE

• Professor Catherin Bull
  Professor of Landscape Architecture & Associate Dean (Research and Research 
  Training), Melbourne University

• Parks Victoria
  Mr Mark Stone, Chief Executive

• National Trust of Australia (Victoria)
  Dr Juliet Bird, Chair, Landscape Committee
  Mr Rob Youl, Member, Landscape Committee

• City of Stonnington
  Councillor Claude Ullin, Mayor
  Mr Hadley Sides, Chief Executive Officer
  Mr Harry Polydorou, Project Planner

31 JANUARY 2008 – PARLIAMENT HOUSE

• City of Greater Dandenong
  Mr Mal Baker, Director, City Development;
  Ms Lynette While, Manager, Property Leisure & Accessibility

• Associate Professor Mardie Townsend
  School of Health and Social Development, Deakin University

• Department of Infrastructure
  Mr Howard Ronaldson, Secretary
Mr Peter Carroll

VicTrack
Mr Greg Holt, Chief Executive Officer

13 FEBRUARY 2008 – CAULFIELD

Melbourne Racing Club
Mr Brian Discombe, Development Manager
Mr Glen Canty, Administration Manager

Glen Eira Council
Cr Margaret Esakoff, Deputy Mayor
Mr Andrew Newton, Chief Executive Officer
Mr Jeff Akhurst, Director, City Development

Caulfield Racecourse Trustees
The Hon Tom Reynolds
Mr Greg Sword
Mr Peter LeGrand

Mr Peter Brohier

Glen Eira Residents' Association
Mr Jack Campbell

Glen Eira Community Association
Mr Don Dunstan, President
Ms Cheryl Forge

Mr Frank Penhalluriack

5 MARCH 2008 – ST KILDA

City of Port Phillip
Mr David Spokes, Chief Executive Officer
Mr Geoff Oulton, Director, City Development

Unchain St Kilda
Mr Peter Holland
Mr John Bennetts
Mr Don Gazzard

Esplanade Alliance
Ms Helen Halliday
Ms Faith Fitzgerald

Mr David Brand

Mr David Carruthers

17 MARCH 2008 – COBURG

Cr Andrea Sharam

Moreland City Council
Mr Peter Brown, Chief Executive
Mr David Dunstan, Manager, Open Space

Ms Anne Sgro
• Merri and Edgars Creek Parkland Group  
  Mr Greg Carden, Chairperson

• Moreland Bicycle Users Group  
  Mr Ross Millward

18 MARCH 2008 – GEELONG

• Save Barwon Heads Alliance  
  Ms Elissa Ashton-Smith, Secretary  
  Mr Steve Wickham, Vice President

• Queenscliffe Community Association  
  Ms Chrinstine Johnson  
  Ms Joan Kenwood

• Victorian Coastal Council  
  Ms Libby Mears, Chair

• Friends of Bellarine Hills  
  Ms Gillian Walker

• Borough of Queenscliffe  
  Cr Pat Semmens, Mayor

• City of Greater Geelong  
  Mr Aaron Garret, Project Development Planner  
  Mr Dean Frost, General Manager - Community Infrastructure and Recreation  
  Mr B Renouf, Sustainability Officer - Environment Unit

3 APRIL 2008 – PARLIAMENT HOUSE

• Royal Park Protection Group Inc  
  Ms Julianne Bell - Convenor  
  Mr Tom Pikusa

• West of Elgar Residents' Association  
  Ms Elizabeth Meredith - Community Contact  
  Dr Terry Randle - Gardiners Creek community Group Spokesperson & Member of WERA

• Deakin University  
  Mr Mark Naughton, Planning and Property Partners  
  Mr Graeme Dennehy, Chief Operating Officer  
  Mr Paul Farley, Interim Director Facilities Management  
  Ms Yvonne Yip, Acting Manager Asset Development

• Friends of Chicquita Park  
  Ms Cathy Jeddou  
  Cr Rosemary West, City of Kingston

• Carlton Residents Association & Carlton Gardens Group  
  Ms Margaret O'Brien, Convenor, Carlton Gardens Group  
  Ms Anne Ritter, Gardens Representative, Carlton Residents Association

• City of Melbourne  
  Mr Rob Adams, Director, City Design and Urban Environment

• Residents 3000  
  Mr Peter Matthews, President
• Protectors of Public Land Victoria Inc
  Ms Juliane Bell, Secretary
  Mr Tom Pikusa

• Ms Heidi Victoria MP - Member for Bayswater
  Mr Paul Cleaves

21 APRIL 2008 – PARLIAMENT HOUSE

• VicRoads
  Mr Gary Liddle, Chief Executive

• Point Lonsdale Coastal Spaces Group
  Mr David Mitchell

• City of Boorondara
  Cr Coral Ross, Mayor
  Cr Jack Wegman
  Mr Phillip Storer, Director, City Planning
  Mr Johann Rajaratnam, Manager, Strategic Planning

• Boorondara Residents’ Action Group
  Mr Jack Roach, Acting President

• Planning Backlash
  Ms Mary Drost, Convenor

20 MAY 2008 – PARLIAMENT HOUSE

• Citta Property Group
  Mr Stephen McMillan, Managing Director

22 MAY 2008 – PARLIAMENT HOUSE

• Hon. Justin Madden, Minister for Planning
• Hon. Theo Theophanous, Minister for Major Projects

23 JUNE 2008 – PARLIAMENT HOUSE

• Mr Gavin Jennings, Minister for Environment and Climate Change

27 JUNE 2008 – PARLIAMENT HOUSE

• Melbourne 2030 Expert Audit Group
  Prof Rob Moodie, Chair
  Mr David Whitney
  Mr Michael Wright, QC

• Friends of the Zoos
  Ms Christina Dennis, President

• Mr Maurice Schinkel

30 JUNE 2008 – PARLIAMENT HOUSE

• Kew Cottages Coalition
  Mr Brian Walsh, President
  Dr Lindsay Grayson
APPENDIX 3
List of public land sites referred to in the Select Committee establishing debate

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 4
Letter from the Attorney-General (26 September 2007)

26 SEP 2007

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 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 1958 and Crown Land (Reserves) Act 1976. 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

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
Cher 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 an 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—
(b) 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 consequential 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.

Schedule

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<td>Minister for Property &amp; Services</td>
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Each other provision of the Land Act insosfar 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.

1. Department of Conservation, Forests & Lands

Department of Property and Services

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.

Land Act, Division 6 of Part 1

Director-General of Conservation, Forests & Lands

Director-General of Property and Services

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.

Land Act, Division 6 of Part 1

Crown Land (Reserve) Act 1978

NOTICE OF INTENTION

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

KEWELL—The temporary reservation by Order in Council of 17 February 1985 of 2466 hectares, more or less, of land in the Township of Kewell, Parish of Kewell East as a site for water supply purposes so far only as the portion containing 1790 square metres as indicated by hatching on plan hereunder—(Rs. 2769).

SOUTH MELBOURNE—The temporary reservation by Order in Council of 21 January 1986 of 4640 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. 12578).

YARRAGON—The temporary reservation by Order in Council of 3 November 1884 of 4794 hectares of land in section F, Parish of Yarragon as a site for Racecourse and other purposes of Public Recreation, revoked as to part by various Orders, so far only as the portion containing 2029 square metres as indicated by hatching on plan hereunder—(Rs. 684).
APPENDIX 5
Letter from the Attorney-General (29 October 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 56 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 HULLS MP
Attorney-General
APPENDIX 6
Letter from the Clerk of the Legislative Council
(31 October 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 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.
Please contact me if you require any further information.

Yours sincerely

Wayne Tunnecliffe
Clerk of the Legislative Council

Parliament House Melbourne Victoria 3002 Australia Telephone 61 3 9651 8911 Facsimile 61 3 9650 5253
APPENDIX 7
Letter To The Attorney-General (13 November 2007)

13 November 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,

[Signature]

RICHARD WILLIS
SECRETARY
SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT
APPENDIX 8
Letter From The Attorney-General (23 November 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 Erskine 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 9
List of Documents/Information Not Provided To The Committee

ALL STATE GOVERNMENT DEPARTMENTS

- Data for the last five years relating 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.

DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT

- A list of public land that has been sold or alienated in the recent past.
- A list of government land that has been sold or disposed of in recent years.

DEPARTMENT OF TREASURY AND FINANCE

- A list of all sales and/or transfer of public land by all Government departments for the past five years, detailing:
  - the address,
  - approximate land size,
  - sale price,
  - method of sale (eg. public tender), and
  - any conditions placed upon the sale or proposed sale.
- A list of examples of the ‘exception circumstances’ referred to in paragraph 51.1 of the Department’s opening statement in evidence on 29 October 2007.

MINISTER FOR PLANNING

- Copy of the probity audit in relation to the Kew Residential Services development.
- List of all land sold by the Government between 2002-2008, including its size and value.
- Copies of documents relating to the sale of schools by the former Government.

PARKS VICTORIA

- A list of proposals before Parks Victoria to develop structures on Crown land for the past two years.
- Whether section 7(7)(b) of the Parks Victoria Act 1998 relates to land not owned by the State, and any related examples.

TOURISM VICTORIA

- A list of the projects that Tourism Victoria has been involved in on Crown land.
- A copy of the agenda and minutes from the Tourism Task Group.
VICTORIAN COASTAL COUNCIL

- Advice if any, provided to the Minister for Tourism over the last three years in relation to coastal policy or individual public land sites.
- Advice if any, provided to the Minister for Tourism over the last three years in relation to the Ramsar sites.

VICTRACK

- Copies of correspondence between VicTrack and other Government Departments/Agencies relating to the Camberwell railway station development.

VICROADS

- Copy of background work and research in relation to the Camberwell railway station site.
- List of the land administered by VicRoads.
- Copy of the documents in relation to the Tullamarine-Calder interchange.
- The income derived by VicRoads from land sales for the past three financial years.
- List of the Roadhouses on land owned by VicRoads.
- Copy of documents relating to the expansion of the freeway through Glen Iris.
- Copies of documents relating to the realignment of the Great Ocean Road at Port Campbell.
APPENDIX 10
Public Land Act proposed by David Gabriel-Jones, The Public Land Consultancy

THE PUBLIC LAND SUSTAINABILITY ACT (2005?)

Native Title
Salutation to the traditional owners of land in Victoria
Acknowledgement of the Commonwealth Native Title Act

Objects of this Act
The Principle of Sustainability
The Principle of Subsidiarily
The Objective of Net Gain

Application of this Act
Public Land means –
- all unreserved Crown Land previously subject to the Land Act
- all reserved Crown Land previously subject to the Crown Land (Reserves) Act
- all reserved Forest previously subject to the Forests Act
- all freehold land owned by Ministers or government agencies
- any freehold land brought into the public estate through acquisition
This Act does not apply to land under the National Parks Act

The Public Land Sustainability Council
The Victorian Environment Assessment Council shall be reconstituted as the Public Land Sustainability Council
The Council will have the same powers as the VEAC, with the additional power to assess freehold land and recommend on its acquisition for inclusion as Public Land

The Public Land Register
There shall be a register of all Public Land
At three-yearly intervals the Minister shall report on the extent of the Public Land portfolio, its relevant characteristics, changes to the portfolio, and progress towards the achieving the objects of this Act
Land Assessment
All Public Land shall be assessed by the Public Land Sustainability Council.
The Governor-in-Council may prescribe procedures and criteria for assessments.
Assessments may be conducted on a geographic basis or a functional basis.
Priority shall be given to land not already assessed by the LCC or its successors.

Control of Public Land
Public Land assessed as being of National, State or Regional significance shall be under
the control of the Minister, except that:
If it is used by another Minister or government agency, it shall be under the control of
the relevant Minister, who may not dispose of it.

Divesting of Public Land
Public Land assessed as being of Local Significance shall be –
protected under the relevant Planning Scheme, and
transferred into freehold title with appropriate covenants and easements.
If it is used by another Minister, Department or government authority, it shall be
granted in fee
simple to that user
Otherwise, it shall be granted in fee simple to the relevant Municipality.

Disposal of Surplus Land
Public Land assessed as having no public values, or values which can readily be
protected under the Planning and Environment Act, shall be converted to freehold and
sold.

Acquisition of High-Significance Land
Freehold land may be acquired for addition to the Public Land Register if -
- it is assessed as being of national, state or regional significance, and
- its values cannot be adequately protected if it remains in private ownership

Planning of Public Land
The Minister may approve Public Land Management Plans
The Planning and Environment Act shall not apply to land for which there is
- a Public Land Management Plan or
- a Coastal Action Plan or
- a Plan of Management under the National Parks Act
The Planning and Environment Act shall apply to all other Public Land

Management of Public Land
The controlling Minister -
- may manage Public Land directly
- may engage Parks Victoria, a Council, or another Statutory Authority as delegated manager
- all delegated managers must submit performance reports to the Minister

Private Use of Public Land
If there is a Public Land Management Plan -
The controlling Minister may issue leases for up to 21 years
The delegated manager may issue licences for up to 3 years
Leases and licences must not compromise the public values of the land
Leases and licenses must provide a clear public benefit
APPENDIX 11
Disposal of Surplus Crown Land – Department of Treasury and Finance

Government agencies declare property surplus to operational requirement. Refer to DTF for disposal.

DSE to undertake a land assessment process. Refer to attached flowchart.

Option of transfer to other government agencies explored.

Determine initial disposal strategy.

Seek Minister for Finance "approval in principle" to sell.

Minister approves and gives delegation for administration of sale.

Prepare property for sale. Consult with relevant parties including Municipal Councils, Heritage etc. obtain geotechnical, survey, valuation, reservation revocation, rezoning etc, and seek Land Monitor approval to transactions over $250,000.

COMMON SALE METHODS – LAND ACT 1958

Section 89
Public sale by auction or tender.

Section 91
Enter into negotiations with highest bidder (not less than reserve).

Section 99
Sale to public authority for public purpose. With consent of Governor in Council.

Section 99A
Sale by private treaty on terms and conditions that the Minister thinks fit and at a price not less than Valuer General’s valuation. Usually long term lessees/licences. With consent of Governor in Council.

Section 209
Private treaty sale to adjoining owner where land does not exceed 13 hectares and in the Minister’s opinion the most proper and efficient use of the Crown land is in conjunction with the freehold land.

Property Sold

Crown Grant issued by Governor in Council

Grant registered at Land Registry
SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT – FINAL REPORT

EXTRACTS OF PROCEEDINGS

Legislative Council Standing Order 24.08 requires the Committee to include in its report all the divisions which occurred during meetings and the names of Members voting for each side on a question. The Chairman of the Select Committee can only vote when there is an equality of votes.

Between 21 May 2007 and 15 September 2008 the Committee held 43 meetings and divided on the following questions:

Meeting No 5 – 22 August 2007

Question – That:

1. The Committee write to all State Government Departments seeking the following 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

From and including 1 January 2002.

a. A list of all public land formally declared surplus to the requirements of the department where it has been either offered for sale, transferred, redeveloped, or where there has been a significant change in land use, including details of completed sales and proposed sales, location, sale price, method of sale (eg. public tender), and the involvement of other departments and authorities:

b. The extent to which Land Monitoring in DSE were involved;

c. The prior use of the land, including planning and zoning;

d. The subsequent use of the land, including whether the department was involved in any rezoning;

e. The extent of public consultation and/or hearings, if any, during the sale, transfer or redevelopment process;

f. The extent of public consultation and/or hearings, if any, pursuant to the re-zoning process; and

g. Any conditions placed upon the sale or proposed sale, transfer or redevelopment.
2. That the Committee write to the Department of Treasury and Finance and request they provide a copy of their list of the sale and/or transfer of public land by all Government departments from and including 1 January 2002, briefly detailing:

- the address,
- approximate land size
- sale price,
- method of sale (eg. public tender), and
- any conditions placed upon the sale or proposed sale.

3. That the above will be requested in addition to any formal submission that the Department(s) may be preparing, but may be attached to their submission.

That responses be received by the Committee by Friday 28 September 2007.

Amendment Proposed – That in paragraph 1, the words ‘The Committee write to all State Government Departments seeking the following information with respect to’ be omitted with the view of inserting in its place the following: ‘That the Committee write to the Minister for Finance seeking the following information from all State Government Departments seeking the following information with respect to:’

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<th>Ayes 2</th>
<th>Noes 4</th>
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<td>Mr B Tee</td>
<td>Mr P Hall</td>
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<td>Mr M Viney</td>
<td>Mr P Kavanagh</td>
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<td>Mr E O’Donohue</td>
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<td>Ms S Pennicuik</td>
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Amendment negatived

Question – That the motion be agreed to – put.

The Committee divided

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<th>Ayes 4</th>
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<td>Mr P Hall</td>
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<td>Ms S Pennicuik</td>
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Question agreed to.

Meeting No 7 – 20 September 2007

Question – That the Committee write to Walker Corporation requesting that they reconsider the invitation to give evidence at the public hearing on 26 September 2007 and advise the Committee Secretariat of its decision in writing no later than 5.00 p.m. on Monday 24 September 2007.
Should the invitation be further declined, that the Committee proceed to summons the Victorian Manager, Walker Corporation, together with the Kew Residential Services Development Manager to attend a public hearing and give evidence at 10.00 a.m. on Monday 8 October 2007.

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

**Noes 2**
- Mr M S Viney
- Mr B L Tee

Question agreed to.

**Meeting No 13 – 30 October 2007**

Question – That the Committee write to the Clerk 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. The Committee also seeks the Clerk’s advice on the options available to the Committee to proceed.

**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.

**Meeting No 16 – 8 November 2007**

Question – 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.

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

**Noes 2**
- Mr B L Tee

Question agreed to.
Question – That the Secretary of the Department of Sustainability and Environment, together with relevant Deputy Secretaries and senior officers, be requested to give evidence on Monday 19 November 2007 and that the Secretary be given until 5.00 p.m on Monday 12 November 2007 in which to accept the invitation. In the event that the above request is not met, the Committee Secretary be authorised to proceed to summons relevant Department officers to attend the hearing on 19 November.

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

Noes 2
Mr B L Tee

Question agreed to.

Meeting No 22 – 3 December 2007

The Committee considered the First Interim Report at this meeting. All division are recorded in the Extracts of Proceedings in this report, tabled on 6 December 2007.

Meeting No 25 – 31 January 2008

Question – That this Committee initiate a comparison of the actions of the Kennett Government with the present Government over the sale of public schools. In particular the actions undertaken by Mr J. Kennett and Education Ministers, Mr P. Gude and Mr D. Hayward and their relationship with the current Leader of the Opposition, Mr E. Baillieu and his profiting from the sale of these schools by his company Baillieu Knight Frank be fully investigated and examined.

AYES 2
Mr B L Tee
Mr E Thornley

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

Question negatived

Question – That Given the former Prime Minister's preference to locate Nuclear Reactors in Victoria on Commonwealth land in locations including South Gippsland, Western Port, Port Phillip Bay and Victoria's West Coast, that the Committee seeks to invite submissions and attendance at hearings from interested parties concerning the process that would need to transpire for this to occur and specifically invite Dr Switkowski.

AYES 2
Mr B L Tee
Mr E Thornley

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

Question negatived
Question – That this Committee seek to invite submissions and attendance from interested parties to discuss the proposed sale of Commonwealth land at Point Nepean by the Howard Government and the role played by Fran Bailey MP and Greg Hunt MP.

AYES 2
Mr B L Tee
Mr E Thornley

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

Question negatived

Meeting No 38 – 10 June 2008

The Committee considered the Second Interim Report at this meeting. All division are recorded in the Extracts of Proceedings in this report, tabled on 11 June 2008.

Proceedings on Consideration of Draft Report

The Committee divided on the following questions, with the result of the divisions detailed below.

Paragraph and finding numbers refer to the Committee’s draft report, and consequently may differ from the final adopted report as printed.

ADOPTION MEETING No 1 – 8 SEPTEMBER 2008

FINDING 1.1

The Government’s refusal to accept the advice of the Legislative Council Clerk and subsequent Committee clarification of its terms of reference, together with the insistence by the Government for the Committee to go back to the Legislative Council to seek an amendment to its reference, represents a serious breach of the separation of powers between Parliament and the Executive. There is a dangerous precedent whereby a Government, formed in the Lower House, seeks to amend the terms of reference for a committee created by the Upper House.

Question – That Finding 1.1 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.
FINDING 1.2

The Government’s interference and attempts to limit the Committee’s investigations are in direct conflict with the Government’s major reform of the Upper House, which took effect in November 2006, with the purpose of enabling the Legislative Council to operate effectively as a genuine House of Review.

Question – That Finding 1.2 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 MEETING No 2 – 9 SEPTEMBER 2008

FINDING 2.1

The current process for the identification and determination of land as surplus requires review and reform. There is a lack of a uniform, consistent and transparent process, and a lack of consultation with local government and community.

Question – That Finding 2.1 stand part of the report – put.

The Committee divided.

Ayes 3
Mr P D Kavanagh
Mr E J O’Donohue
Ms S M Pennicuik

Noes 1
Mr B L Tee

Question agreed to.

FINDING 2.3

The Government’s current system of land classification is ad hoc, lacks transparency and needs to be reviewed and revamped. A new process should be inclusive of and open to the community, councils and any other relevant interested parties. Open space requirements should become explicit criteria in these new guidelines.

Amendment moved by Ms S M Pennicuik – That Finding 2.3 be omitted with the view of inserting in its place the following: “The current approach to crown land classification is ad hoc, lacks transparency and needs to be reviewed and reformed. A new process should be inclusive of and open to the
community, councils and any other relevant interested parties. Open space requirements should become explicit criteria in these new guidelines.’

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 1  
Mr B L Tee  

Amendment agreed to.

FINDING 2.4

Evidence would suggest the Administrative Arrangements Order was simply used by the Government to limit the Committee’s evidence and to avoid responding to community input with respect to sites such as Kew Residential Services, Port Campbell headlands and Devilbend Reserve. Although requested, at no stage did the Government provide the Committee with any internal assessments made under Administrative Arrangements Order with respect to these sites that would support the Government’s decision not to comment on the sites.

Amendment moved by Mr P D Kavanagh – That the words ‘would suggest’ be omitted with a view of inserting in their place ‘suggests’.

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 1  
Mr B L Tee  

Amendment agreed to.

(Note the Committee resolved to move this finding to the body of the text in Chapter 5.)

RECOMMENDATION 2.3

That any land surplus to the Government’s requirements be subject to a comprehensive assessment, incorporating a formal mechanism for local government, stakeholder and community input, and be based on public value criteria including conservation, historical, recreation, tourism and cultural significance.
Amendment moved by Ms S M Pennicuik – That the words ‘That any land surplus to the Government’s’ be omitted with the view of inserting in their place the following ‘That any land deemed by a Government department or agency as surplus to its’.

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 1
Mr B L Tee

Amendment agreed to.

FINDING 2.5

Public land and open is becoming more important to the community as the population increases. Artificial Government targets for the sale of land risk placing short term financial considerations ahead of long term planning and management of public land for long term community benefit.

Amendment moved by Ms S M Pennicuik – That Finding 2.5 be omitted with the view of inserting in its place the following ‘Public land and open space is becoming more important to the community the population and housing density increase. Artificial government targets for the sale of land risk placing short term financial considerations ahead of long term planning and management of public land for community benefit.’

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 1
Mr B L Tee

Amendment agreed to.

FINDING 2.6

The Department of Treasury and Finance budget target for the sale of surplus Crown land may act as an artificial driver to the sale of land, and can be seen as detrimental to the management of the public land estate. The target implies a possible conflict of interest between achieving the best outcomes for the community and achieving departmental sales targets.

Amendment moved by Ms S M Pennicuik – That the words ‘land, and can be seen as detrimental to the management of the public land estate’ be omitted with the view of inserting in their place the following ‘public land’.
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 1**

Mr B L Tee

Amendment agreed to.

**RECOMMENDATION 2.4**

That the Government instigate a strategic approach to valuing public land incorporating social, environmental and other benefits.

**Amendment moved by Mr E J O'Donohue** – That Recommendation 2.4 be omitted with the view of inserting in its place the following ‘That the Government instigate and develop a strategic approach to valuing public land which incorporates social, environmental and other values.’

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 1**

Mr B L Tee

Amendment agreed to.

**RECOMMENDATION: 2.5**

That the Government regard budget paper estimates for the proceeds of Crown land sales.

**Amendment moved by Mr E J O'Donohue** – That Recommendation 2.5 be omitted with the view of inserting in its place the following ‘That the Government regards budget estimates for the proceeds of Crown land sales.’

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 1**

Mr B L Tee

Amendment agreed to.
RECOMMENDATION 2.6

That the Government revise and update the responsibilities of the Government Land Monitor to include the establishment and maintenance of a comprehensive, publicly accessible database of all Crown land sales and transfers between Government departments/agencies and other public bodies including local Government by both public and private processes, subject to privacy constraints.

The database should include specific details on transaction amounts and parties involved, subject to privacy constraints and should form the basis of a publicly available report and be included with the Department of Treasury and Finance’s consolidated annual report.

Question – That Recommendation 2.6 stand part of the report – put.

The Committee divided.

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

Noes 1  
Mr B L Tee

Question agreed to.

RECOMMENDATION 2.7

That a Register of Surplus Public Land be established to facilitate greater coordination, accountability and transparency in public land management and to provide for a more strategic use of surplus land.

Question – That Recommendation 2.7 stand part of the report – put.

The Committee divided.

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

Noes 1  
Mr B L Tee

Question agreed to.

RECOMMENDATION 2.10

That where land is transferred from a State department or agency to local government, past contributions in maintenance and upgrades should be considered in determining the amount local government is required to pay.

Amendment moved by Mr P D Kavanagh – That Recommendation 2.10 be omitted with the view of inserting in its place the following ‘That where land is transferred from a State department or agency to local government, past
contributions in maintenance and upgrade should be considered by the State Government in determining the amount local government is required to pay.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  Noes 1
Mr P D Kavanagh  Mr B L Tee
Mr E J O'Donohue
Ms S M Pennicuik

Amendment agreed to.

RECOMMENDATION 2.11

That any ongoing costs to a council of maintaining a site which has been sold or transferred to local government as a community asset should also be acknowledged and State Government financial assistance be provided, especially if the site is of regional or state significance.

Amendment moved by Mr E J O'Donohue – That the word ‘provided’ be omitted with the view of inserting in its place ‘considered’.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4  Noes 1
Mr P R Hall  Ms S M Pennicuik
Mr P D Kavanagh
Mr E J O'Donohue
Mr B L Tee

Amendment agreed to.

FINDING 2.7

The management and disposal of public land suffers from a lack of coordination across government departments and agencies and the three tiers of government resulting in lost opportunities and suboptimal outcomes for public land and open space sites.

Amendment moved by Mr P D Kavanagh – That the words ‘a lack of’ be omitted with the view of inserting in their place ‘an insufficient level of’.

Question – That the amendment be agreed to – put.

The Committee divided.
RECOMMENDATION 2.13

That the Government implement mechanisms to facilitate a more strategic and coordinated approach to public land management and disposal including:

- a memorandum between the three tiers of government and other key public land managers;
- a long-term plan for public land, including open space;
- a central agency or department to coordinate public land and open space policy and management; and
- the establishment of an independent advisory board.

**Amendment moved by Ms S M Pennicuik** – That Recommendation 2.13 be omitted with the view of inserting in its place the following ‘That the Government develop mechanisms to facilitate a more strategic and coordinated approach to the management of public land, including:

- a memorandum between the three tiers of government and other key public land managers;
- a long-term plan for public land and public open space;
- a central agency or department to coordinate public land and open space policy and management; and
- the establishment of an independent advisory board.

Question – That the amendment be agreed to – put.

The Committee divided.

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

**Noes 2**
Mr P D Kavanagh
Mr B L Tee

Amendment agreed to.
FINDING 2.8

That while there are mechanisms to ensure best results for governments in land transactions, mechanisms to ensure, advocate for, or appeal best results for the community, are much weaker.

Amendment moved by Mr P D Kavanagh – That Finding 2.8 be omitted with the view of inserting in its place the following ‘That although there are mechanisms to ensure best results for governments in land transactions, systems to ensure, advocate for, or appeal best results for the community are much weaker.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4  Noes 1
Mr P R Hall  Mr B L Tee
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Amendment agreed to.

RECOMMENDATION 2.14

That the Government establish an independent commission against corruption in Victoria.

Question – That Recommendation 2.7 stand part of the report – put.

The Committee divided.

Ayes 4  Noes 1
Mr P R Hall  Mr B L Tee
Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Question agreed to.

RECOMMENDATION 3.10

That any sale and alienation of open space be minimised until an audit is undertaken.

Amendment moved by Ms S M Pennicuik – That Recommendation 3.10 be omitted with the view of inserting in its place the following ‘That there be a moratorium on the sale of public land until such a time as an audit is undertaken.’

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

**Ayes 1**

Ms S M Pennicuik

**Noes 3**

Mr P D Kavanagh
Mr E J O'Donohue
Mr B L Tee

Amendment negatived.

**Amendment moved by Mr B L Tee** – That the word ‘minimised’ be omitted with the view of inserting in its place ‘be carefully considered’.

The Committee divided.

**Ayes 1**

Mr B L Tee

**Noes 3**

Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

Amendment negatived.

Question – That Recommendation 3.10 stand part of the report – put.

The Committee divided.

**Ayes 3**

Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

**Noes 1**

Mr B L Tee

Question agreed to.

**RECOMMENDATION 4.1**

That the Minister for Planning publicly release all documents pertaining to the Melbourne 2030 smart growth committees, including minutes, agendas and submissions, so that their role and assumptions in the establishment of Melbourne 2030 can be fully assessed.

Question – That Recommendation 4.1 stand part of the report – put.

The Committee divided.

**Ayes 3**

Mr P D Kavanagh
Mr E J O'Donohue
Ms S M Pennicuik

**Noes 1**

Mr B L Tee

Question agreed to.
FINDING 4.3

The Committee supports Green Wedges and many of the principles of Melbourne 2030 policy relating to public open space, however evidence indicates the implementation of these policies has fallen short of community expectations and Government stated aims.

Amendment moved by Mr P D Kavanagh – That Finding 4.3 be omitted with the view of inserting in its place the following ‘The Committee supports Green Wedges and many of the principles of Melbourne 2030 policy relating to public open space, however evidence to the Committee indicates the implementation of these policies has fallen short of community expectations and the Government’s stated aims.

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 1
Mr B L Tee

Amendment agreed to.

ADOPTION MEETING No 3 – 10 SEPTEMBER 2008

NEW FINDING

Amendment moved by Mr P D Kavanagh – That the following new finding be inserted after Finding 4.6 ‘The Government acknowledge that there is a strong perception in the community that Melbourne 2030 policy is not protecting public land and open space in the community’s interests.’

Question – That the new finding be agreed to – put.

The Committee divided.

Ayes 3
Mr P R Hall
Mr P D Kavanagh
Ms S M Pennicuik

Noes 1
Mr B L Tee

Question agreed to.

FINDING 5.1

The Committee’s ability to investigate the sale and development of the Kew Residential Services site was significantly restricted by a lack of full cooperation from the Government.
Amendment moved by Ms S M Pennicuik – That Finding 5.1 be omitted with the view of inserting in its place the following ‘The Committee’s ability to investigate the development of the Kew Residential Services site was significantly restricted by the less than full cooperation from the Government.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  
Mr P R Hall  
Mr P D Kavanagh  
Ms S M Pennicuik

Noes 1  
Mr B L Tee

Amendment agreed to.

FINDING 5.2

The Government’s denial that the Kew site could be considered by the Committee under its terms of reference is in conflict with the clear intention of the Legislative Council in establishing the Select Committee. It is contrary to accepted parliamentary practices whereby a parliamentary committee may interpret its own terms of reference, and displays contempt for the valuable contributions made by local community groups and local councils on this important issue.

Amendment moved by Ms S M Pennicuik – That Finding 5.2 be omitted with the view of inserting in its place the following ‘The Government’s assertion that the Kew site could not be considered by the Committee under its terms of reference is in conflict with the clear intention of the Legislative Council in establishing the Select Committee. It is contrary to accepted parliamentary practices that a parliamentary committee may interpret its own terms of reference, and displays contempt for the valuable contributions made by local community groups and local councils on this important issue.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  
Mr P R Hall  
Mr P D Kavanagh  
Ms S M Pennicuik

Noes 1  
Mr B L Tee

Amendment agreed to.

FINDING 5.3

The Planning process for the KRS development lacked openness and accountability. This was compounded by the Government overriding the local council’s planning powers and removal of VCAT appeal rights.
Amendment proposed by Ms S M Pennicuik – That Finding 5.3 be omitted with the view of inserting in its place the following ‘The process whereby the State Government overrode the planning powers of the Boroondara City Council in relation to the KRS site has resulted in a lack of transparency and openness.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  
Mr P R Hall  
Mr P D Kavanagh  
Ms S M Pennicuik

Noes 1  
Mr B L Tee

Amendment agreed to.

FINDING 5.4

There exists an apparent, if not real, conflict of interest when the State Government is the site owner, joint developer, planning authority, regulator and beneficiary of the development.

Amendment proposed by Mr P D Kavanagh – That the words ‘when the State Government’ be omitted with the view of inserting in their place ‘in the Government’s roles as’.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 3  
Mr P R Hall  
Mr P D Kavanagh  
Ms S M Pennicuik

Noes 1  
Mr B L Tee

Amendment agreed to.

FINDING 5.5

On balance, the re-development of the KRS site has not been in the broader public interest.

Question – That Finding 5.5 stand part of the report – put.

The Committee divided.

Ayes 3  
Mr P R Hall  
Mr P D Kavanagh  
Ms S M Pennicuik

Noes 1  
Mr B L Tee
Question agreed to.

**FINDING 5.6**

Evidence to the Committee highlights a strong perception that the nature and timing of political lobbying and donations may have had an improper influence in the awarding of the tender to develop the Kew Residential Services site. On the basis of evidence received, the Committee finds:

1. Mr Graham Richardson lobbied on behalf of Mirvac on the development and played a pivotal role in Walker Corporation winning the contract to develop the Kew Residential Services site; and

2. the community cannot be confident that political donations made by the developer to the Government had no improper influence in the tender process.

**Amendment moved by Ms S M Pennicuik** – That Finding 5.6 be omitted with the view of inserting in its place the following ‘Evidence put to the Committee indicates a strong public suspicion that the nature and timing of political lobbying and donations may have had an improper influence in the awarding of the tender to develop the Kew Residential Services site. On the basis of evidence received, the Committee finds:

1. Mr Graham Richardson lobbied on behalf of Mirvac on the development and played a pivotal role in Walker Corporation securing a change to the terms of the contract to develop the Kew Residential Services site; and’.

Question – That the amendment be agreed to – put.

The Committee divided.

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Amendment agreed to.

**Amendment moved by Ms S M Pennicuik** – That Finding 5.6 point 2 be omitted, with the view of inserting in its place the following ‘the community cannot be confident that donations made by Walker Corporation to the Australian Labor Party had no improper influence in the tender process.’

Question – That the amendment be agreed to – put.

The Committee divided.

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Amendment agreed to.

RECOMMENDATION 5.1

That issues relating to donations from organisations or individuals engaged in a tender process with the State be referred to the Electoral Matters Joint Investigatory Committee of the Victorian Parliament as part of its Inquiry into Political Donations and Disclosure.

Amendment proposed by Mr P R Hall – That the words ‘public assets’ be omitted with the view of inserting in their place the following ‘land or other public assets’.

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 1  
Mr B L Tee

Amendment agreed to.

FINDING 5.7

The development of the KRS site has resulted in a valuable public asset effectively being privatised with the proceeds from this development being used to fund and support disability services, which should be funded from general revenue.

Amendment proposed by Ms S M Pennicuik – That Finding 5.7 be omitted with the view of inserting in its place the following ‘In effect, the development of the KRS site has resulted in the privatisation of a public facility. While the proceeds from this development are to be used to fund and support disability services, the Committee believes such services should be funded from general revenue and should not be dependent on the sale of public assets.’

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 1  
Mr B L Tee

Amendment agreed to.
FINDING 5.8

The failure of the Government to publicly release financial documents in relation to the KRS development has undermined the public's confidence in the process and resulted in the perception that the Government has not been open and accountable with respect to related contractual arrangements.

Amendment proposed by Ms S M Pennicuik – That Finding 5.8 be omitted with the view of inserting in its place the following ‘The community is not aware of the full financial arrangements with respect to the KRS development.’

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 1  
Mr B L Tee

Amendment agreed to.

RECOMMENDATION 5.2

That the Victorian Government publish the financial arrangements and probity report for the KRS development.

Amendment proposed by Ms S M Pennicuik – That the word ‘full’ be inserted between the words ‘financial’ and ‘arrangements’.

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 1  
Mr B L Tee

Amendment agreed to.

RECOMMENDATION 5.3

That the Victorian Ombudsman investigate the probity of the KRS development tender processes.

Question – That Recommendation 5.3 stand part of the report – put.

The Committee divided.
FINDING 5.9

Based on current development proposals, the further development of the KRS site will result in a missed opportunity to use the purpose built facilities for much needed disability and respite care.

Question – That Finding 5.9 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 1
Mr B L Tee

Question agreed to.

RECOMMENDATION 5.4

That the Government review the current proposal for the KRS development to ensure the project incorporates adequate protection for the site’s open space, heritage and provision of much needed disability services.

Amendment moved by Ms S M Pennicuik – That Recommendation 5.4 be omitted with the view of inserting in its place the following ‘That the Government review the current proposal for the KRS development to ensure the project incorporates protection of the heritage trees and buildings, protection of open space and provision of much needed disability services.’

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 1
Mr B L Tee

Amendment agreed to.
FINDING 5.10

There exists significant concerns around the process and outcomes regarding the proposed St. Kilda Triangle development. The Committee finds that there is considerable merit in what the community is saying with respect to an inappropriate use of valuable public land and open space in an iconic part of Melbourne.

Amendment proposed by Ms S M Pennicuik – That Finding 5.10 be omitted with the view of inserting in its place the following ‘There is significant concern around the process and outcomes of the proposed St Kilda Triangle development. The Committee finds that there is considerable basis for community concerns with respect to inappropriate use of valuable public land.’

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 1  
Mr B L Tee

Amendment agreed to.

FINDING 5.11

Notwithstanding existing contractual obligations, evidence put to the Committee strongly suggests that the proposal should be reassessed by the Government, the Port Phillip Council and developer to examine:

- the size and nature of the development and its impact on the local community and amenity,
- the lack of compliance with the Urban Design Framework, t
- the conflicting roles of the City of Port Phillip in the planning process,
- the lack of independent analysis,
- the removal of third party appeal rights; and
- the apparent pressure on the Council to approve the development plan.

Amendment proposed by Ms S M Pennicuik – That Finding 5.11 be omitted with the view of inserting in its place the following ‘Evidence put to the Committee strongly suggests that the proposal should be renegotiated by the Government, the Port Phillip Council and developer in consultation with the community with a view to:}
• reducing the size and nature of the development and its impact on the local community and amenity; and

• complying with the Urban Design Framework.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4  Noes 1
Mr P R Hall  Mr B L Tee
Mr P D Kavanagh
Mr E J O’Donohue
Ms S M Pennicuik

Amendment agreed to.

FINDING 5.12

Evidence highlights that the development plans as submitted by Citta Property Group cannot be assessed as conforming with the St. Kilda Urban Design Framework, and as such the Port Phillip Council has erred in approving the development.

Amendment proposed by Ms S M Pennicuik – That Finding 5.12 be omitted with the view of inserting in its place the following ‘Evidence put to the Committee indicates that the development plan as submitted by Citta Property Group does not be assessed as conform with the St Kilda Urban Design Framework, and as such the Port Phillip Council may have erred in approving the development.’

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 4  Noes 1
Mr P R Hall  Mr B L Tee
Mr P D Kavanagh
Mr E J O’Donohue
Ms S M Pennicuik

Amendment agreed to.

FINDING 5.13

The St Kilda Triangle development process establishes a dangerous precedent for the development of public land in any suburb or regional town in Victoria on a number of levels including:

• of the combination of the social and heritage significance of the site;
the potential for a private developer to profit hugely from its commercialisation;

the unique processes involving the passing of the St Kilda Triangle Act, which passes virtually all responsibility for the site from the State Government to the council;

the multiple, conflicting roles of the Council;

the lack of transparency in the tender process; and

the removal of third party appeal rights.

**Amendment proposed by Ms S M Pennicuik** – That Finding 5.13 be omitted with the view of inserting in its place the following ‘The St Kilda Triangle development process establishes a dangerous precedent for the development of public land in any suburb or regional town in Victoria in a number of ways because of the combination of: the social and heritage significance of the site;

the unique process involving the passing of the *St Kilda Triangle Act*, which confers virtually all responsibility for the site from the State Government to the Port Phillip Council;

the multiple, conflicting roles of the Council as proponent, planning authority and committee of management;

the lack of transparency in the tender process;

the removal of third party appeal rights; and

the commercialisation of public land.’

Question – That the amendment be agreed to – put.

The Committee divided.

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Amendment agreed to.
RECOMMENDATION 5.5

The Committee strongly encourages the Victorian Government to work more closely with the Port Phillip Council, Citta Property Group and the local Community within the existing legislative and contractual arrangements, to reach a solution to the St. Kilda Triangle proposal consistent with the St Kilda Triangle development proposal that best meets the community’s expectations.

Amendment proposed by Ms S M Pennicuik – That Recommendation 5.5 be omitted with the view of inserting in its place the following ‘The Committee strongly encourages the Victorian Government to work more closely with the Port Phillip Council, Citta Property Group and the local Community within the existing legislative and contractual arrangements, to reach an outcome to the St. Kilda Triangle proposal consistent with the St Kilda Triangle development proposal that best meets community 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 1
Mr B L Tee

Amendment agreed to.

RECOMMENDATION 5.6

The Committee recommends that the State Government allocate sufficient public funds to restore and refurbish the heritage Palais Theatre, to decontaminate the site, and to ensure that any development on the St. Kilda Triangle site is primarily for cultural, entertainment, recreation and public open space.

Amendment proposed by Ms S M Pennicuik – That the words ‘as promised to the community’ be inserted at the end of Recommendation 5.6.

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 1
Mr B L Tee

Amendment agreed to.
RECOMMENDATION 5.7

The Committee recommends that the Victorian Ombudsman investigate the probity of the processes followed by the State Government and the Council, and whether the public interest has been served.

Amendment proposed by Ms S M Pennicuik – That Recommendation 5.7 be omitted with the view of inserting in its place the following ‘The Committee recommends that the Victorian Ombudsman investigate the probity of the St Kilda Triangle development processes that were followed by the State Government and the Port Phillip Council.’

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 1
Mr B L Tee

Amendment agreed to.

FINDING 5.7

The lack of cultural, social and heritage assessment before the Department of Sustainability and Environment consent for use and development of Crown land (Public Park War Memorial Reserve) should be revised. Any extension to the consent for use and development should take into account the significance of the headland and port to the State of Victoria.

Amendment proposed by Mr E J O'Donohue – That Finding 5.7 be omitted with the view of inserting in its place the following ‘The lack of cultural, social and heritage assessment before the Department of Sustainability and Environment consent for use and development of Crown land (Public Park War Memorial Reserve) should be revised. Any extension to the consent to any future use and development of Crown land should take into account the significance of the headland and port to the State of Victoria..’

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 1
Mr B L Tee

Amendment agreed to.
FINDING 5.8

It was difficult to determine which Government department or agency has responsibility for the geotechnical stability and public liability issues relating to the Port Campbell headlands. This demonstrated the dispersal of Government responsibilities referred to elsewhere in the Report.

Amendment proposed by Ms S M Pennicuik – That Finding 5.18 be omitted with the view of inserting in its place the following ‘It was difficult to determine which Government department or agency has responsibility for the geotechnical stability and public liability issues relating to the Port Campbell headlands.’

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 1
Mr B L Tee

Amendment agreed to.

RECOMMENDATION 5.7

That any public land/Crown land consent for use and development of the Port Campbell headlands site not be granted until further stakeholder and public input is obtained.

Amendment proposed by Ms S M Pennicuik – That Recommendation 5.7 be omitted with the view of inserting in its place the following ‘That the Government notify the relevant authorities that the development of the Southern Ocean Beach House not proceed until the geological assessments are complete.’

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 1
Mr B L Tee

Amendment agreed to.
FINDING 5.7

The Committee highlights concern over the process whereby the Government proceeded to sell for private development the 40 hectare parcel of land attached to the Devilbend Reserve, a site of significant environmental importance. The Committee does not support the practice of selling public land in order to raise funds for the conservation and development of further public land.

The Government’s view that the 40 hectares of land was of no ecological significance, and so was separated from the rest of the Devilbend Reserve site, was in conflict with expert evidence provided to the Committee that it is an integral part of the catchment area.

The Committee finds that the sale of the 40 hectares appears to have been driven entirely by financial considerations and that the significant ecological and conservation values of the land have now been lost. This case study is another example of long term loss for short term gain.

Amendment proposed by Mr E J O’Donohue — That Finding 5.7 (part 1) be omitted with the view of inserting in its place the following ‘The Committee highlights its concern over the process whereby the Government proceeded to sell for private development the approximate 40 hectare parcel of land attached to the Devilbend Reserve, a site of significant environmental value. The Committee does not support the practice of selling public land in order to raise funds for the conservation and development of other public land.’

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.

Question — That Finding 5.7 (part 2) stand part of the report.

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.
Question – That Finding 5.7 (part 3) stand part of the report.

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.

**FINDING**

The Committee supports the Boroondara City Council’s criticisms of the Government’s management of the proposed Camberwell Station redevelopment project.

Question – That the Finding stand part of the report.

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.

**RECOMMENDATION**

That the Government publicly disclose the full contract terms entered into with Tenterfield in relation to the Camberwell Railway Station redevelopment.

Question – That the Recommendation stand part of the report.

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.
RECOMMENDATION

That the development of a Government register and audit of public land (referred to in Chapter 2) include a full audit of all VicTrack land holdings.

Question – That the Recommendation stand part of the report.

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.

FINDINGS

The Committee believes it would be beneficial if deliberations of the Inter-departmental committee established to review the Werribee Zoo proposal were released publicly.

Question – That the Finding stand part of the report.

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.

CHAPTER 1

Question – That Chapter 1, 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.
CHAPTER 2

Question – That Chapter 2, 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.

CHAPTER 4

Question – That Chapter 4, 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.

CHAPTER 5

Question – That Chapter 5, 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.

OVERVIEW AND LIST OF FINDINGS/RECOMMENDATIONS

Question – That the Overview and List of Findings/Recommendations, 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 Final Report, together with Appendices and Overview and List of Findings/Recommendations, be adopted as the Final 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

Select Committee on Public Land – An opportunity wasted.

Victoria is in the middle of an unprecedented population boom. Accommodating this record growth is placing pressure on finite public open space and needs a careful and considered response by policy makers.

Despite public submissions seeking to constructively engage in this important debate this Committee and the Final Report is overshadowed by political grandstanding and ill considered headline chasing.

However, since the inception of the committee over 16 months ago, there has been 23 days of public hearings, received evidence from 142 witnesses, and cost an estimated $3 million.

This is an unfortunate waste of taxpayer resources and a cruel blow to those who have genuinely tried to engage with the Committee.

On a positive note some discussion and many recommendations emerge dealing in a considered manner with the challenges facing the Victorian community. This is in no small part due to the contribution and hard work of the committee staff. These parts of the report make a contribution to this important debate.

It is our hope that the community, policy makers and all levels of government can disregard the political hyperbole embedded in this report and consider the recommendations focussing constructively on addressing the important issue of protecting our open spaces.

It is pleasing that, notwithstanding the politically charged nature of the report many of these recommendations have the unanimous support of the Committee.

Terms of Reference

The Committee and the Government have an unresolved dispute about the interpretation of the Committee’s terms of reference.

This issue took up a substantial part of the first and second interim reports. Once again, in this final report, some 10 pages are devoted to re-litigating the issue.

The final report finds that,

- The Clerk of the Legislative Council wrote to the committee stating that an option for resolving the impasse involved the committee seeking clarification and or amendment from the Legislative Council, and

- The Government and Government witnesses agreed to provide the evidence requested if the Committees terms of reference were clarified and/or amended to include the matters requested.
Despite the reams of pages expended by the Committee on this issue, there is never any explanation for why the Committee did not ask the Legislative Council to clarify or amend its terms of reference as suggested by the Clerk of the Legislative Council. This failure to act is both disappointing and incomprehensible.

This failure hampered the Committee’s ability to get the full picture of many of the issues it was investigating. It suggests a lack of commitment to genuinely examine the issues raised by the evidence and re-enforces the political nature of the Committee. This was nothing other than a political tactic to criticise the Government.

The Committee’s refusal to resolve the impasse over its terms of reference is offensive to community members denied a full and proper examination of the issues they raised.

Political recommendations

Part of the rationale for establishing this committee were the completely unsubstantiated and unproven generalised aspersions from the Opposition alleging some forms of unspecified dishonesty.

One of the opportunities for the Opposition-controlled Committee was to specify any alleged dishonesty and provide evidence for it. This committee was controlled by the Opposition, had the power to subpoena witnesses and documents and compel testimony and to provide a forum under Parliamentary privilege to enable any witness or whistle-blowers to step forward with any specific allegations or evidence.

None have been forthcoming.

It is therefore disappointing, if unsurprising, that the Opposition decided, at the last minute, with no surrounding context from any evidence before the committee, to repeat its demand for the creation of an independent commission against corruption without any basis whatsoever.

The Opposition did not need 23 days and $3 million to continue that campaign and did nothing to advance it through the work of this committee.

Public Policy

Since 2002 there have been approximately 400 disposals of crown land alone. All of these sales were subject to appropriate probity processes, including the Government Land Monitor and are ultimately subject to further scrutiny from the Auditor General should any wrong doing be alleged in the conduct of these sales.

The Committee has failed to bring about any new evidence, information, or solutions to a variety of important issues raised by the community.

For example, issues like the St Kilda Triangle project have had no new evidence or solutions brought about by the late arrival and grand-standing of this committee. In fact the Committee in this final report often simply repeats word for word statements and allegations made in previous reports.
It is notable that despite the political grandstanding of the Opposition on a range of contentious issues on which they have made no practical impact, the only positive changes that have occurred as a result of this committee’s work has come from the efforts of Government members – the progress towards community consultation in regards to Caulfield Racecourse Reserve and the attention of the Minister drawn to the public safety concerns at the Port Campbell headland.

Brian Tee, MLC, Deputy Chair

Evan Thornley, MLC

10 September 2008