

# CORRECTED VERSION

## SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

St Kilda — 5 March 2008

### Members

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Mr P. Hall

Mr P. Kavanagh

Mr E. O'Donohue

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### Witness

Mr D. Brand, architect, member, Esplanade Alliance, and member, St Kilda Triangle Design Review Committee.

**The CHAIR** — David, if you would like to present your evidence we will follow with some questions.

**Mr BRAND** — Thanks very much. I certainly appreciate the opportunity. My name is David Brand and I have been associated with the St Kilda triangle project in many guises over the years. I was the ward councillor for St Kilda when the process was set up, when the St Kilda's edge project was started, and I had something to do with the political impetus behind it, I suppose. I was a member of the St Kilda's Edge Committee from its inception until I left council in 2004. I have been a design and cultural expert adviser to council from 2006, and I have given expert advice to council, been commissioned for expert advice on several foreshore-related things, including two sets of advice on timber selection — looking at the short lists.

I have recently been appointed to the St Kilda Triangle Design Review Committee, which is the committee which is involved, I guess, in the tenders side of things rather than the planning side of this process. It is about the relationship between the tenderer and council, and it recommends on design changes that come through. I have been a member of the Esplanade Alliance for 10 years, and that means obviously since the tenders came out, or since the preferred tenderer was announced, I have been part of community activism calling for change on various aspects of this project. I have forgotten to say that I have also taught architecture and urban design at Melbourne University based on the triangle site — so I sort of know it from many angles.

I want to say from the beginning that many of the original goals of the triangle project and the St Kilda Edge project I think have been achieved very well, and I think it is really important to look at the successes as well as the failures, and really pinpoint them as much as possible, because it is very easy to write off the whole thing and thereby miss where things really did go wrong. I think there is a tendency to do that, and you lose the specific pinpointing of the bits that did go wrong if you do not try to look at where they went right. What I want to do here today is provide you, on the back of your sheet, with a point-by-point description, I suppose, of the forks in the road where I believe things went off the track, of what the ingredients for failure were. But I do want to say that I think that it is in the context of a lot of success as well, and that needs to be picked out.

The main area on which I really do believe the whole thing has gone seriously wrong is this discrepancy between the development plan and the urban design framework. To me that is the heart of it. Before there was a discrepancy in evidence, I would have thought we were doing pretty well. When the discrepancy became obvious, I think the fact that we were not doing very well became very obvious. I want to look at those processes that led to this discrepancy, and I want to focus my concerns particularly around the UDF itself, and particularly around how the provisions of the UDF for the site could have been so sidelined in this process. They just got completely ignored in various ways. Particularly I think for this committee it is a question of how a document which really embodies the community's aspirations on a site like this could be so overridden, to result in something which is so far away from what was contemplated.

This is a really serious process problem, and I think it is highlighted by the question of how much consideration council has to give the UDF; it does have to give consideration to a document which is really the blueprint of the community's vision for the site and values for the site. I do not think you could do a much better UDF. I think the UDF process itself was excellent, the document is excellent, and it is something which we should all have faith in. It seems to have been betrayed; this is a big problem. It is a serious question for the state government because the local community, and by extension local communities all over Victoria, have had its faith in community consultation and their faith in the planning process and in the planning scheme itself severely damaged by what has happened at the triangle site. We need to look very carefully at the future of public planning processes like the one we went through here because they should be the basis of really excellent and well-accepted outcomes; in this case it has not been.

I also want to say that I think we should be reminded of the jeopardy that public projects like this can be plunged into by lack of appropriate government funding within the PPP formula. I would say that if one cause amongst many can be singled out for the problems here, I believe it was the state government's refusal to add public funding to the PPP mix which ultimately undid the UDF and made its vision so apparently impossible to achieve and made it so difficult for council to uphold its core principles. I think on the triangle site we see what I would call a 'PPP syndrome' in operation, where you have this overdependence upon on-site revenue generation, resulting in often tragic design compromises. I think you only have to look at something like the Southern Cross station, which is such a fantastic building, on the corner — its main function is fantastic. It sits there beside a piece of urban design which is really quite shameful for Melbourne, the DFO thing which is just up the road occupying almost the same amount of space, and that is the price that was paid for getting a great building on the site.

Melbourne should be getting great buildings on its rare, important sites and not having to pay for it on-site with a big ugly revenue-generator sitting right next door to it. You look also at the compromises that were made at the back of the station, where they decided to make the roof flat instead of curvy; and, speaking as an architect, it is just a fiasco; it is really shameful. This is what is happening at the triangle site too — this sort of muddling. In the end there is something about the whole ethos of the place and the whole ethos of government and community, which is happening. I think the problem with the PPP process is this: the commercialisation of the public realm and consumerisation of public culture.

Having said that there are many, many successes, I want to just briefly review the negative results that have come out of here, just so that they are in our minds — we have been through them enough, but in a nutshell there is: the excessive retail dependence of the project and the fact that we have now got an unplanned major activity centre which suddenly cropped up; there is the excessive alcohol-dependent entertainment — and if Evan was around, I would be very happy to answer his questions about what is good entertainment and what is not —

**Mr TEE** — We originally planned to finish at 1.30 p.m. and Evan had a prior commitment, for which he has apologised.

**Mr BRAND** — That is fair enough, yes. But I still might answer his questions. The loss of iconic view lines of the foreshore and the bay: this is something I am very happy to expand on because to me personally this is the biggest tragedy — that there is just so much development on site and almost a good idea of how to handle it but one that does not work, and it is a real tragedy for the history of St Kilda; some very poor architectural outcomes behind the Palais Theatre, with this massive looming hulk of a building, which is an extremely poor way to generate a piece of architecture. If you take it by itself, that little block behind the Palais is probably the most spectacular available development site on the bay at the moment, and its determinants are entirely not architectural.

This is to do with the process here. It is another big problem. In general we are faced with public land use, determined by commercial imperative. The planning process is swamped by development pressure. Finally, in the wash-up around the actual approval process is a sort of a piecemeal approach to last-minute planning and design concessions, which really ended up in an ill-considered outcome full of compromises. As I said, there was a massacre of the design by 1000 cuts. They were needed, but they did not come in the right form, so we had a problem.

I want to run through what I see as the chronological order almost of the keys to where we went wrong. The first one is, as I have said, is the inappropriate definition of the private-public partnership, being 100 per cent private funding. I actually think the PPP is not necessarily a bad idea at all. I think it has potential for working, but you have to have a mechanism that works to obtain the optimal amount of commercial investment in the place. Clearly a lot of goods can be provided on the triangle site for a profit, and I do not see why the public purse should pay for that, but the outcome should be what is the best outcome. It should be not the best the commercial dollar can do for the site, but the best that can be achieved by a partnership of public and private money, and that should be culturally determined by what is culturally appropriate on the site, what is the best outcome for the site on all the parameters and then you work out how much of that can be paid by commercial money. But if you do, as they did here, say it has got to be 100 per cent self-funding, you are immediately hogtied into a very particular relationship and a very particular set of values, and that to me is the biggest tragedy. You end up with this terrible design and cultural problem of having to have the revenue generation on-site. It is like having a circus tent or a tent for entertainment with the generator sitting inside it whirring away — it spoils it. It really should have been thought how to provide the funding from off-site.

Then there is the question of the conflation of functions and powers, another problem which has bedevilled this whole thing. I think the concentration of the project control in the council's hands was potentially a good move. In all these decisions there are pros and cons every time we have to make a decision: should it be in state control, or should it be in council control? I felt very happy with it being in council control for various reasons. For the sake of the coordination of all the projects across the foreshore I think it is important to keep it in the control of people who really know. I think that state governments' performance on foreshore projects in the past, like with the sea baths, has been pretty dismal. It is mainly because they are too removed from it. You need people who know it and love it and understand it to coordinate the whole thing. I am happy having it under council's control. It is a form of government where the community, obviously, has much more say in it. Even though I am bitterly disappointed in the way that things turned out with our council here, I still think if the same proposal had have been debated in state government I reckon it would have had less chance getting up than it did here. I still think the community pressure

here is actually more intense and more directly felt than it would be in state government, so I still believe in the formula. The trouble is that it has lots and lots of pitfalls, and we fell straight into some of them. With council's dual roles, we are told that they are not the project proponent. I do not know what the right term is, but they commissioned the project, they are the — —

**The CHAIR** — Co-proponent, I think is what was put to you.

**Mr BRAND** — Yes. And as the planning authority potentially there is a conflict of interest there. There is no question about that. But it is not unknown in council. This happens with small projects all the time, where your constituents say, 'We want the footpath widened so we can have a nice public space', and what have you, and you say, 'That is a great idea'. You get it through, you get it designed and everything is happy and you put it into planning, and then suddenly the statutory planning process kicks in and you get objectors, your constituents, who say, 'You have just taken away several parking spaces; this is unacceptable'. You have to sit there and rule on both sides of the fence, and this is what council is faced with all the time. It is not unprecedented, but on something this size it becomes a real problem. For something this size and this difficult they really needed significant additional checks and balances to ameliorate the problems at least. That should have involved a much more thorough or much more complex planning stage. There should have been much more consultation during the time after the application was put in. Instead council just absolutely rushed it through in inexplicable haste.

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. I checked through all of my papers last night, and I have to say that I voted for removing third-party appeal rights, so I probably need to explain that. I think it was justified to do that in the sense of if a planning application is put in which conforms to the master plan, or conforms to the UDF or whatever the stage is, I think that having had so much consultation on those planning guidelines, on the UDF, that if something which is important for this project people could not then just say, 'Oh, no! We do not think that is a good idea', and appeal it to VCAT on a whole lot of grounds. There is certainly a record and experience here of businesses objecting to other businesses' proposals just for the sake of holding them up, and it was something which was really going to be a significant problem.

The problem is it is all very well saying, 'It is justifiable if the applications are consistent with the guidelines; I think they should go through, maybe without appeal', but it removes that crucial check of whether the guidelines themselves are consistent. This was a real problem — that is, it was never expected that the development plan would be so different from the UDF. It was meant to be a reflection of the UDF. Had it been a reflection of the UDF I think we would have been fine, but suddenly there is this unappealable disparity, which I think is a real mistake and I do regret that.

In the tender phase one thing I have left out of my list is all of the questions that were around commercial in confidence. I think there is probably too much confidentiality, even though I understand that you have to have a lot in the tender process, and maybe it was necessary to get the best candidates, but it actually had the effect of being very corrosive on public confidence. I am not saying that the solution is not to have confidentiality, but it is a problem that needs to be looked at. Commercial in confidence is one of the biggest corrosive factors in public confidence in the development of public land.

The terms of the tender, I reckon, should have been redefined after the early phase of the tender actually indicated that the outcomes were going to be unacceptable. It is like they put the tender documents together, which I think are really well done. It is like a recipe that you put in the oven, see what happens, see how it develops, and you open the oven door and then you see what you have baked. It was like a monster. It was much, much bigger than anybody had ever anticipated. That was the moment, in hindsight — and it is very easy to talk in hindsight — they should have said, 'Hold on! Maybe we have got the formula wrong a little bit here'. I believe the main problem with the formula was the self-funding requirement. I saw the last three tenders short-listed, and I think they all completely understood that this was not meant to be a big development project, that there was an imperative on as little as development as possible, that they believed council would actually choose the smaller development, all things being even, and I believe they were all competing against each other to do as little as possible on the site, and they all had to do an enormous amount on the site. This was a moment when I think that we should have seen — I was out of council at this stage — that it was going to turn out to be too big. We should have exercised the rights, which are always reserved for council, to rejig the tender.

After the preferred tenderer was selected I think there was another failure. When you choose the preferred tenderer in a tender process you are not saying that what you have chosen is actually completely conforming and the correct solution. You are saying this is the best one, this is the best that the process has thrown up, and then you work out what you are going to do with it. You have got three choices: you are going to say it is perfect; or let's try and get it to where we need it to be, deal with these people as the preferred tenderers, the ones who seem to have the most potential, who show the best likelihood of getting it right, and move them into conformity with what we want; or you abandon it or go backwards or whatever. I think the St Kilda's Edge Committee's responsibility was to bring that tender into conformity with the expectations, but for various reasons, many of them obviously very difficult, they failed to bring the tender into conformity with the original brief, which is the UDF.

In the planning phase once that tender had been submitted as an application, the first failing was that the interpretation of the planning scheme was distorted to conform with the tender proposal. They just stretched it and stretched it and stretched it, in my view, to try and fit and make acceptable the actual proposal. I think there was a failure to obtain independent advice on a number of issues. I think we have been through those ones. In its guise as a planning authority I think council should have commissioned more reports, for instance, on the desirable caps for the impact of licensed premises in the area. I would have thought that would be a pretty normal thing to do rather than relying on the proponents' figures and ideas. And the same with the commercial impact; they eventually did do a study on that. But there were quite few of those sorts of pieces of independent advice that I think they needed to do to put a check on the advice that they were giving themselves as the proponents, and I think also to be seen to be doing that in the context that so many of the checks and balances were being removed.

There was certainly a failure to heed the independent advice warning them of serious nonconformities. The Matrix report that they commissioned as part of it was severely limited in what it could say, but the way it said it — you can see it in the language — that the objections that such-and-such does not conform with the UDF have considerable merit is about the best they could say. But it means the objections that there is non-conformity here are basically right, and you need to look at it. It was glossed over almost entirely with an incredibly stretchy sort of interpretation of the planning scheme in my view.

In the end, where I sort of feel that council fell down probably worse than at any other time in the whole process was in the final planning approval process, where they just went into this — they just tried to get it through so quickly. In fact the developers here have got planning approval faster than you can get a planning approval for, basically, a carport in your back yard. It really happened quickly here. They facilitated it like crazy, and it made the whole principle of public consultation, the idea of independent review and the idea of checks and balances — I think it was an affront to that, and it was very, very disappointing, because it was unnecessary and very disappointing. And you end up with really quite a shambles of policy on the run and design on the run. Notwithstanding, I have got to say there were some heroic efforts amongst a lot of the officers and councillors. I think especially the mayor made a fantastic effort at actually keeping public consultation going. She really did a magnificent job under difficult circumstances, and of course there were the councillors who voted against it. There was a lot of courage shown, and there was a lot of difficulty that they all faced. I am not saying that they were all sitting there, stupid, self-interested people. I think they were really genuinely trying, but the circumstances were just crazy and unmanageable. That is pretty much what I have got to say, but I would enjoy answering some questions.

**The CHAIR** — David, I am not going to ask you a question, but I am going to say that I appreciate your structured diagnosis, for want of a better word, of what has gone wrong with this process. I think it is very helpful to us. I tend to agree with your view that the spirit of the UDF has certainly been betrayed. There are maybe one or two things I would see slightly differently, but essentially I agree with much of what you have said. Thank you.

**Mr TEE** — Just a couple of things: a couple of the earlier witnesses talked about the change to the shadow line from 10.00 a.m. to 11.00 a.m., and I am wondering if you could outline what that actually means and give your views on that.

**Mr BRAND** — It is an interesting one, because I have argued for a long time that if you are going to have to have building mass on the triangle site, probably the best place for it is behind the Palais as some sort of complement to the building and also as a spectacular piece of iconic architecture, not unlike the rear end of Luna Park is in a sense on the foreshore there. That is where building volume, if anywhere, should be sort of sequestered on the site and not blocking out the view lines from the Upper Esplanade. I have always thought that the overshadowing controls along the foreshore there should be discretionary so that in odd or exceptional cases like this they could be breached.

Nevertheless the overshadowing controls along the foreshore are a deeply entrenched and very important piece of legislation, and they are mandatory. As the Esplanade Alliance we have certainly dropped that as an argument all the way through, because the UDF clearly sets out that it must not overshadow the footpath on the other side of the street. To me that is one of the constraints which has actually sort of bedevilled the design process on the site, but you accept it. It was amazing to me on the night that they actually made the final decision that suddenly the overshadowing rule had been changed from 10.00 a.m. to 11.00 a.m. on 22 June. It is a minor breach. It is one which I think probably helps, because they certainly said they would use that extra volume that they would gain behind the Palais to improve the views across the rest of the site. So they might take some mass from one place into another. I have no idea what the quantity of that is or how that works or anything, but in principle I agree with it. But the idea of actually breaching that particular rule in the last 24 hours, when it really should have been up for grabs a year and a half ago when people were designing these things and actually conceiving how the site would work is a bit of a surprise. When parameters like that start changing right at the end it is a pity. I am not against the change. I just wish it had come a year and a half earlier.

**Mr TEE** — I just want a return to the issue that you raised about the removal of third-party appeal rights. I have got a recollection and was wondering if you could just confirm it. As I understand it that was a council request made of the government?

**Mr BRAND** — It was a government request made of council. It was very, very much the wish of the government. Basically it was saying probably the government will not support the whole package without that.

**Ms PENNICUIK** — David, thanks for this great two pages — —

**Mr BRAND** — I am glad you appreciate it is two pages and not my normal 20.

**Ms PENNICUIK** — I think it pretty well outlines my concerns, and I agree with you and have made public comments on this, that the lack of funding and resourcing from the state government is really the kernel around all of this — it is sort of the eye of the storm, really. I wanted to ask you about the site view lines, because they are very central to the UDF and very central I think to the public's understanding that, whatever went on that site, they would still be able to walk along the Esplanade and see the beach pretty well. But the CEO today made the comment that that has basically been fixed by last-minute changes made, and I wonder if you would agree with that or have any comments on that.

**Mr BRAND** — Okay. Working backwards on that, I have not seen what the last-minute changes are, so I cannot say whether it has been fixed or not. I would be extremely doubtful, given what I have seen. There are other changes that have been made which have also been claimed to have fixed things in terms of view lines. I just think there is a lack of understanding across the board of how the view lines are affected. When this design was first put forward everybody saw it in principle as actually being a really clever solution to retaining view lines. Basically they drew a line where the old Palace used to stand — which broke the horizon line — and said, 'Everything to the left of that line of the Palace we will call a view sacrifice zone, and we won't be trying to preserve views there; everything to the right, we'll keep a horizontal surface and only punctuate it with the odd pavilion and what have you so you've got the views there'. It is absolutely excellent theory. But when you put a view plan out to the horizon it means that anybody standing there will not see anything below the horizon, so all the foreshore itself will be obliterated. You will be able to see the ships on the horizon, but to see a ship sitting on the horizon, to have that experience, you actually have to see the water below it to make it the picturesque, memorable thing that we love here.

**The CHAIR** — Binoculars would do it, wouldn't they?

**Mr BRAND** — No.

**The CHAIR** — Even they would not help?

**Mr BRAND** — No, it needs that relationship. It is the same with a sunset. I mean, a sunset you can see in the sky, but the sunset is really reflected in the water. It is the same with the weather. For these things you need the sky and the water to have these views. That all basically gets eliminated with that horizontal view plan, especially when it is raised up to eye level, which is the height that it is put at when you are walking along The Esplanade. The argument that is put by the developers and the designers is that we provide fantastic views along the outer edge of the triangle site — and they will be fantastic views; the design of the walkways and things on the Jacka

Boulevard edge of the triangle site are really fantastic, and they will be really spectacular — but 95 per cent of the people who enjoy the view now will have it obliterated, because that pathway is basically for recreational walking, whereas The Esplanade is actually where everyday life in St Kilda has always gone on. The whole St Kilda experience actually happens not when you decide to go to a restaurant or not when you decide to take a particular walk; when you live, work, commute through or visit the place is when this fantastic experience of The Esplanade actually happens.

The rider on all of the complaints about the view lines is that you have to debate the status of the Upper Esplanade versus the path on the outer edge of the cliff face on the triangle site. I strongly believe that the essence of the St Kilda experience is based on that Esplanade experience. The UDF is absolutely clear on that. Of all the things the UDF goes on about, that is the one that it is most unequivocal and clearest about. It says that the Upper Esplanade is the shape of St Kilda; it is the shape of St Kilda that gives it its sense of place; that is what needs to be preserved. There are just no two ways about it; that is being lost. I do not think people who are dealing with the questions even really understand it quite often. So when they say that they have been solved, I do not believe it. I think those last-minute provisions for changing the massing actually logically speaking have a chance of doing that, but I have not seen the amount of volume which is involved. As a member of the design review committee now, I would certainly expect to have that run past the committee, and there has been no activity on that yet.

**Ms PENNICUIK** — David, I just want to go back to the Palais, which probably you have realised today is an issue for me. You talk about having an iconic building at the back of the Palais to occupy that space. You and I know that we went through the whole Esplanade Hotel issue, when we were told that there needed to be an iconic building built at the back of the hotel. My argument was always that the hotel was the iconic building. I have got the same argument here, that the Palais is the iconic building that really should dominate the site and not be dominated by other buildings, as we have seen happen on the Esplanade site. You mentioned the back of Luna Park. My concern is that this large edifice that is going to wrap itself around the Palais is going to remove the view of Luna Park from the foreshore, particularly as you approach from the west. It seems that there is a conflict between architecture and preserving the vista of what is there with already iconic buildings on the site.

**Mr BRAND** — I think you always need to try to preserve all of the special views — you have got all the things of real beauty, impact and excitement that you need to preserve as much as possible. That is a starting point. The aim here surely is also to build more buildings that will actually live up to the same quality and interest and that will be really fantastic. There are opportunities on that site, as opposed to almost anywhere else on the St Kilda foreshore, for buildings which can be absolutely fantastic and become the signature of St Kilda themselves. But to me it is a matter of adding them rather than subtracting other things by putting them there. They need to be as well as rather than instead of. I certainly agree that the Palais itself needs to be the dominant feature on the site. That has been fundamental to all the advice that I have ever given. That needs to be the dominant factor. But I think you can have iconic buildings along with it, and I think it is possible to put them there. I think the way the buildings at the back of the Palais are now configured is a terrible problem, because one of the main heritage values of the Palais is its visual presence across the entire St Kilda foreshore. From St Kilda beach from the kiosk you can see the hulking, familiar mass of the Palais. I think that the profile of it, the silhouette of it, needs to be visible right across St Kilda, and unfortunately the new buildings, which do not really go higher than the Palais, just crowd around, cluster and mask it to the point that it loses its distinctiveness. Even just on heritage grounds I think that is a terrible pity, and certainly in terms of the local iconography and memorability of St Kilda I think that is a terrible shame.

**Ms PENNICUIK** — David, I just have one more quick question, and it is a difficult one. Given how we have got here and the process we have all talked about today, can you see a way out or a process out of here?

**Mr BRAND** — It is a very difficult question. I believe there was a decision waiting for council to make on 7 February which would have been a courageous and constructive decision and which would have just stepped back a moment to take stock, rethink it and come out with all of the best qualities of what is in it and avoid the things that have gone wrong. But unfortunately that was not taken, and it is very hard to undo that particular decision. There are all sorts of loopholes and possibilities. The decision could be scuttled in a court case, there are heritage questions that could upset it, there are political questions that could upset it, but I cannot count on any of those. And with some of them you do not really want to change something on some tiny loophole; that does not seem right. But there are many reasons why it could have to be reassessed, and if that happens for any reason we really need to dive in immediately and say, 'Look, we really do have to look at it again; I think we've got all the material'. I think we are set up to really know what would work. It is just a matter of getting that opening again, but I am not sure where that opening is going to come from.

**Mr O'DONOHUE** — Thank you for your evidence. What reason did the state government give for wishing to remove appeal rights?

**Mr BRAND** — It is the basis of retaining confidence in the overall development process for any of the potential tenderers, because the tender process was going to take a long time and was going to take a lot of money. I know that the tenderers spent at least \$2 million, at least some of the short-listed ones, on their tender. It is a big, serious issue. Then to go through all the stages and actually have the potential right at the end of that to be tripped up by, for instance, a vexatious appeal to VCAT, which we have seen many times — businesses appealing against businesses, much more than community appealing against anything — is something which the tenderers needed to have some protection against in order to get ones that are going to work. I know the winning tenderer actually said to me on the day — just a sort of an off-the-cuff comment — that the things that really gave them the confidence to really be serious about putting the big effort was the detail of the tender documents and how well they were worked out and thought through, leaving aside a few things that happened, and the fact that the appeal rights were removed. That is what gave the developers confidence in doing it. That also has caused these massive pitfalls. I am not saying that is justified, and that was basically what the state government was saying. I suppose there is a political dimension in it — you know, wanting as little trouble and to get through as smoothly as possible, an expedience factor there, I do not know, but there was certainly a very strong demand from state government that that would be the way it was.

**Mr O'DONOHUE** — This is just a comment: really there is an admission by the state government that the system it has fails, and that is reflected in the fact that it wanted that appeal right removed. I do not expect you to comment on that, but that is in essence what it reflects.

**Mr BRAND** — I guess it is balanced to some degree by — the normal planning application that goes in comes out of the blue and then people have a look at it and gets assessed and a decision made and then people actually react to the decision, and they need that channel. Whereas with this one so much of the consideration was done up-front to the point that all of the reasons that the community could object to it were actually sorted out before they went into the process. It all depends on the outcome being consistent with what the original agreement was. If it had been consistent with the initial agreement, we would only have been left with vexatious appellants. But unfortunately it left that huge pitfall, that door wide open for everything to go wrong.

**Mr KAVANAGH** — Thank you for your submission, Mr Brand. Ms Pennicuik already asked a couple of the questions I was going to ask you. But you are concerned about view lines you said. I would like to comment on something I asked Mr Spokes earlier about this picture. Do you think that represents what the development will look like?

**Mr BRAND** — Personally I do not, for several reasons. I do not think it is an accurately set-up depiction. It is also a very unflattering picture of the building itself, and also for the reason that I think the proposal now is that the roof form is not going to be on that building, so it does not represent what is proposed now. I do not think it is actually a very fair representation of what was there before. I do believe in what it is getting at, that postcard, which is that we have this iconic view of the Palais Theatre that you see as you come around and down the Esplanade as part of that absolute quintessential Melbourne experience of arriving in St Kilda. You see it there, and that building is built right in front of it, which seems to me wrong. 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.

**Mr KAVANAGH** — Thank you.

**The CHAIR** — Can I thank you, David, for your generous evidence. I appreciate that greatly.

**Witness withdrew.**