

CORRECTED VERSION

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Melbourne — 19 November 2007

Members

Mr D. Davis

Mr P. Hall

Mr P. Kavanagh

Mr E. O'Donohue

Ms S. Pennicuik

Mr B. Tee

Mr E. Thornley

Chair: Mr D. Davis

Deputy Chair: Mr B. Tee

Staff

Secretary: Mr R. Willis

Research Officer: Ms C. Williams

Witnesses

Mr P. Harris, secretary,

Mr M. Grealy, senior project officer, and

Ms C. Douglass, director, public land use and development, Department of Sustainability and Environment.

The CHAIR — I declare open the public hearing of the Legislative Council Select Committee on Public Land Development. Today's hearings are in relation to the Victorian government's policies in relation to the sale and development of public land. I welcome officials from the Department of Sustainability and Environment here today. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council's standing orders. Any comments you make outside the hearing may not be afforded such privilege. As witnesses you will be provided with proof versions of the transcript in the next few days to which you will have the opportunity to make minor typographical and other corrections. Mr Peter Harris, as secretary of the department, would you care to make a brief opening statement, followed by questions.

Mr HARRIS — Thank you, Chair. I think a copy of the statement has been distributed and should not occupy a lot of time. I will read that through.

I am Peter Harris, Secretary of the Department of Sustainability and Environment. I attend this hearing to give evidence about the role of the Department of Sustainability and Environment in relation to the following processes and functions: the management of Crown land, including the reservation of land under the Crown Land (Reserves) Act 1978, the revocation of reservations and the appointment and removal of committees of management; the leasing and licensing of Crown land; the valuation of Crown land for the purpose of sale; the survey of Crown land for the purpose of sale; the keeping of the register of land records by the registrar of titles; at the request of the Department of Treasury and Finance or other department or agency which has declared Crown land surplus to their requirements, the making of a land assessment and the production of a report.

This statement is intended for the general advice of the select committee in relation to government policy on the sale and alienation of public land, and to set out the context in which the activities of DSE may be of relevance to certain aspects of the terms of reference. Where we can assist the committee on specific issues, we will. However, the committee will understand that we may have to take some matters on notice, or refer them back to the minister.

Firstly, in relation to the management of Crown land, the Minister for Environment and Climate Change administers the Land Act 1958 and the Crown Land (Reserves) Act 1978. On behalf of the minister, DSE is responsible for the management of Crown land, including that which is the subject of a reservation under the Crown Land (Reserves) Act 1978.

Under the Crown Land (Reserves) Act, Crown land required for any public purpose can be permanently or temporarily reserved for that purpose. The process for making a reservation involves the Governor in Council making an order and its publication in the *Government Gazette*. DSE assesses the Crown land for the purpose of briefing the minister and making a recommendation about the suitability of the land for reservation. Land which has been reserved cannot be sold, leased or licensed unless the reservation has been revoked.

A temporary reservation can only be revoked after notice of intention to revoke has been published in the *Government Gazette*. At least 14 days must expire before the Governor in Council may make an order to effect the revocation, which order must also be published in the *Government Gazette*. A permanent reservation, apart from a few minor exceptions identified in the act, can only be removed by legislation.

A committee of management can be appointed to manage reserved land. The appointment can be done by the Governor in Council or the minister depending on the circumstances. The Governor in Council and the minister also have powers to revoke an appointment. DSE prepares the recommendations to effect the appointment of a committee of management.

In relation to leasing and licensing, Crown land can be leased or licensed. There are various statutory provisions which enable Crown land to be leased or licensed depending on the land's 'status'. If the land is reserved, generally the Crown Land (Reserves) Act 1978 fixes the requirements for a lease or licence. For unreserved land the Land Act 1958 applies. The following acts also authorise leasing and licensing of Crown land: the National Parks Act 1975, the Forests Act 1958 and the Alpine Resorts (Management) Act 1997.

For Crown land which is managed by a committee of management, the committee implements the process of leasing or licensing. For land which is not reserved, DSE generally manages the process for grant of a lease or licence.

In relation to valuation of land for sale, the valuer-general is appointed under the Valuation of Land Act 1960 and employed under the Public Administration Act 2004. The Minister for Environment and Climate Change administers the Valuation of Land Act 1960.

At the request of a government department, the valuer-general is authorised to conduct a valuation of Crown land for the purpose of sale. The minister has no power to direct the valuer-general in the performance of the land valuation function.

In relation to surveying of land for sale, the surveyor-general is employed under the Public Administration Act 2004. That person must be a licensed surveyor. The surveyor-general may be only be suspended or removed in accordance with section 41 of the Surveying Act 2004. Again, the Minister for Environment and Climate Change administers that act.

Before Crown land can be sold, amongst other steps, including those noted in this statement, the surveyor-general must conduct a survey. The surveyor-general certifies the plan of the land sold and the plan forms part of the Crown grant of the land. The surveyor-general is responsible for correct positioning of Crown boundaries, for correcting defects in Crown boundaries and for registration of Crown survey plans. The surveyor-general is also responsible for providing survey services in respect of government projects and land dealings.

In relation to keeping of the land register, the registrar of titles is appointed under the Transfer of Land Act 1958. The Minister for Environment and Climate Change, again, administers this act. After Crown land is sold a Crown grant is created and lodged with the registrar of titles for registration. The system of registration of title and its guarantee by the state underpins a significant aspect of the state's economy.

In relation to land assessment and evaluation, when requested, DSE performs a land assessment. This involves making an assessment as to whether Crown land which has been identified as surplus to the requirements of a government department or agency has 'public land values'. 'Public land values' are described in the government submission — part 3, page 10 — as 'any residual biodiversity, cultural or community use values and whether retention of the land in public ownership is necessary to protect these values'.

A land assessment for this purpose is made by staff who are experienced with performance of the function. The report which is produced as a record of the assessment is called an 'Assessment and Evaluation Report'. The report has been devised to ensure consistency and reliability of assessment. A report is subject to review by supervisors. When completed, the report is supplied to the Department of Treasury and Finance. The form of assessment and the process is the same whether the land is managed by DSE or by some other department or agency.

Finally, in relation to the government view, I note the Attorney-General has written to the chair of the select committee on two occasions informing it of government advice to government officials who may attend hearings to give evidence on the scope of the terms of reference. More generally, the select committee will be aware that in appearing I do so as a representative of the Minister for Environment and Climate Change and within the terms established by the select committee and the Department of Premier and Cabinet guidelines for appearing before state parliamentary committees for witnesses.

I would like to introduce at this time Ms Caroline Douglass, who is director of public land use and development, and Mr Maurie Grealy, senior project officer, who appear on the same basis as I do.

The CHAIR — Thank you for your submission. There is a whole range of questions that I think committee members wish to ask DSE officials, including yourselves, and I certainly put on record that this will not be the last occasion where we need to deal with a series of matters.

Part 1(c) of our terms of reference deals with inquiring into the sale and development of public land and the relationship to the Melbourne 2030 policy and the green wedges. I am interested in, first of all, whether your department still maintains responsibility for those parts or whether that is wholly now across with planning and community development, so this is, in a sense, a clarification of where the responsibilities now lie; and the role of your department at the time in the lead-up to the announcement of the 2030 policy in 2002 in terms of our terms of reference, the relationship of Melbourne 2002, as it was promulgated, with public land and the green wedges?

Mr HARRIS — It is reasonably clear that the responsibility for the Melbourne 2030 policy and green wedges belongs to the Department of Planning and Community Development; it is no longer a matter for DSE. I assume the committee will be talking — —

The CHAIR — Although it was at the time of the development of that policy.

Mr HARRIS — Of the Melbourne 2030 policy?

The CHAIR — Yes.

Mr HARRIS — I think in fact it was the Department of Infrastructure at that time because I was in the Department of Infrastructure, so in fact I think DSE was created after the creation of Melbourne 2030. The Department of Planning and Community Development was primarily interested, I think, in responding to the committee's issues in relation to Melbourne 2030 and green wedges. The Department of Sustainability and Environment has a representative on a technical working group, which is interested in the green wedges issue, but that would be primarily from the direction of native vegetation policy, possibly flora and fauna guarantees; generally our environment-related issues. So primary consideration of land issues and Melbourne 2030 policy will probably be a matter for the Department of Planning and Community Development.

The CHAIR — And the relationship of public land inside those green wedges, how does that juxtaposition work? Can you explain that?

Mr HARRIS — In terms of public land, it would depend, I guess, on the individual piece of planning policy that you are concerned about. There is no standing policy on public land in relation to green wedges as a — —

The CHAIR — So it is a case-by-case arrangement, is it?

Mr HARRIS — It would depend. I do not know what the committee is actually interested in here. As far as the department is concerned, our primary interest in Melbourne 2030 and green wedges would be through the technical working group in relation to environment issues.

The CHAIR — Do you have a list of the public land or government land sites, whichever you choose, inside the green wedges that you would maintain responsibility for?

Mr HARRIS — No.

The CHAIR — There is no such list?

Mr HARRIS — No.

Ms PENNICUIK — I was just going to ask: does the department have a register or list of land that it has overseen the sale or acquisition of?

Mr HARRIS — A list of land we are overseeing the sale or acquisition?

Ms PENNICUIK — Yes. You are required to make an assessment of the land.

Mr HARRIS — That is right.

Ms PENNICUIK — So any of the land you assessed for sale or acquisition, do you have a list of that? Do you keep a register or list of that land?

Mr HARRIS — So consistent with the committee's terms of reference, you will be asking about public land?

Ms PENNICUIK — Yes.

Mr HARRIS — We do not have any focus on public land for sale. Acquisition — I am not sure about. I do not think there is such a list. Can I get some clarification on acquisition?

Ms PENNICUIK — I am referring to the guidelines here: policy and instructions for the purchase and compulsory acquisition and sale of public land.

Mr HARRIS — The committee is inquiring into the sale of land, but you are asking me about the acquisition of land?

Ms PENNICUIK — Just because that is in the guidelines, but I am quite happy to limit it to sale if that is what you want to talk about.

Mr HARRIS — In general terms — because I am quite happy to advise the committee in general terms — we do acquire land, but I do not think there is a list as such. We have a public acquisition overlay for the purposes of providing parkland in Melbourne. That is broadly, I think, its purpose. So land-holders are identified that the state is interested in acquiring the land at some time in the future, and the government provides us with funds for that purpose. In recent years the government has acquired a significant amount of land and continues to be interested in doing so. So 'list' is probably not the right terminology. There is clearly an overlay which designates to people that we are interested in acquiring your land for the purposes of creating metropolitan parks.

Ms PENNICUIK — I suppose, Mr Harris, the background of the question is we have the Department of Treasury and Finance. What we are interested in is whether somewhere in the government/public sector there is a repository so the community can look at a list of what public land has been sold, for example, in the last five years. The department which says it is responsible for that said it did not hold such a list, so I am wondering whether you hold such a list in terms of the community being able to look back over the historic record. Where would that list be held — that is what we are trying to find out?

Mr HARRIS — I think consistent — —

Ms PENNICUIK — Or that there would be no list held anywhere seems to be a possibility to contemplate.

Mr HARRIS — I think you have already got advice from the Department of Treasury and Finance on that matter and DTF determines policy in this area. But in terms of each individual department, I am sure departments do keep track of their landholdings, without doubt they keep track of their landholdings. The difficulty I have is the committee is inquiring under a set of terms of reference which effectively I think you have already been advised from the government's perspective says there is no public land list available, so I am not able to move outside the advice already given to you by the government.

I am quite clear in my own mind that departments do keep track of their landholdings and therefore have reasonable knowledge of what they have disposed of and why they have disposed of it. It is not a central matter. I think you have also been advised by the Department of Treasury and Finance of different landholdings held by different departments which have different status. As far as DSE is concerned, our primary role in this area, speaking still generically, is in terms of conducting an assessment. That is what we do.

Ms PENNICUIK — That is right. Is there a list or register of those assessments?

Mr HARRIS — The department would have good knowledge of the assessments it has conducted but in terms of the committee's terms of reference, I cannot advise you on those because you are talking about the sale of public land, and there is definitionally no list of the sale of public land.

Ms PENNICUIK — We might get to that issue a bit later about what public land is. Certainly public land as far as the community is concerned is land that is not private land. There may be other technicalities flying around the place.

Mr HARRIS — I did read the transcript.

Ms PENNICUIK — Can I ask another question? Does the department take an interest in activities or developments on land adjacent to public land in respect of the potential impacts upon that land of the development that is taking place on land adjacent to it?

Mr HARRIS — Sorry, can I be clear about the question again? You are asking about — —

Ms PENNICUIK — If there is a development taking place on land adjacent to public land, does the department take an interest in that development, for the potential impact of that development on the public land adjacent to it?

Ms DOUGLASS — Generally we can take an interest but also, as you would understand, a third of the state is Crown land, so it is quite a big area to oversee.

Ms PENNICUIK — I am speaking in particular about, for example, the proposed development at Port Campbell which is adjacent to Crown land, public land that is under threat in terms of its stability. Has the department taken any interest in that development in terms of its impact on the public land?

Mr HARRIS — In terms of asking a specific question, under which of the terms of reference are you asking this question?

The CHAIR — The sale or alienation of public land, I would have thought.

Mr HARRIS — What public land are we selling or alienating in relation to Port Campbell?

Ms PENNICUIK — Part of the land may be alienated for the development, as I am sure someone in the department is aware of. But my question is whether — —

Mr HARRIS — No, we do not believe that is correct.

Ms PENNICUIK — Part of the land is going to be acquired by the private developer.

Mr HARRIS — We do not think that that is actually the case.

Ms PENNICUIK — We can agree to disagree on that. My question is pretty straightforward but you do not have an answer to it?

Mr HARRIS — I think Caroline has given you a general answer. We would take an interest but we have very large landholdings so there will be quite a number of developments which could be relevant. You have asked about a specific case, and I have asked under which of the terms of reference you are asking because it seems evident to me that under none of these terms of reference would that be relevant.

The CHAIR — Nonsense.

Ms PENNICUIK — Under point 17 of your statement that you have just tabled, in terms of the assessment and evaluation report is there any procedure for public input into that?

Mr HARRIS — Yes.

Ms PENNICUIK — Could you explain that?

Ms DOUGLASS — 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.

Ms PENNICUIK — After the report or assessment has been completed, is there any way the public can provide input to the final report or feedback?

Ms DOUGLASS — No. The opinion of any groups that are sought during the process is considered in making the recommendation but not afterwards. Generally, no.

Mr HARRIS — The department, if I can clarify it, provides the assessment back to the relevant agency so the relevant agency would also have an interest in that process. In other words, ours is a step and a way along the way but it is not a conclusive step.

Ms PENNICUIK — And just one more: under 2.5 of the guidelines it says if the government land monitor, for example, denies an approval it says:

Following consultation ... the minister may approve transactions that do not accord with this policy provided circumstances are established that justify such approval.

What circumstances might they be?

Mr HARRIS — The land monitor is a matter for the Department of Planning and Community Development. In the recent machinery of government changes it moved across to that department as well. It is a question better directed to that department.

Ms PENNICUIK — Thank you.

Mr KAVANAGH — No questions, thank you.

Mr THORNLEY — I just want to clarify a few things. It seems that a number of members of the committee want to use this committee to relitigate planning disputes. If I understood your answer earlier, the only role that your department plays in such matters would be participation in the technical working committee around, in this case, biodiversity issues and undertaking assessments when land is potentially earmarked for sale. Is that correct or is there any other role you play in the planning process?

Mr HARRIS — No, broadly that is right. I would not want to disavow an interest in green wedges, but our interest has definitionally narrowed substantially with the machinery of government changes, and, as you know, it is much more appropriate for the department that is responsible to give the committee the answers. There are a range, obviously, of issues that the department covers off under Melbourne 2030 on a continuing basis. The primary one is the one I have mentioned — it is its native vegetation. I think it is very high and primary on our list of interest, but, as I said, flora and fauna issues generally, natural heritage, water-related issues, flooding, I guess, and coastal issues to the extent that they become relevant. They are all legislative responsibilities of ours, but in terms of the policy which, if I understand rightly, is the interest of the committee, the policy to the extent that it affects land matters and green wedges is a matter for the Department of Planning and Community Development.

Mr THORNLEY — I am not sure if this is within the terms of reference, but you can make an assessment and answer accordingly. Like I said, I am interested in following up the general issues that were raised in the Port Campbell incident, or instance, around the potential public safety issues, or the possibility of undermining of land on the coastline there. Is that an area where this department has expertise, or do you have any guidance for the committee as to who we would talk to who has expertise in making assessments of public safety in those sorts of issues?

Mr HARRIS — It would depend on what form of public safety is of primary concern. I think the difficulty in discussing specific cases is that we get rapidly down to something that, as you say, is definitionally not part of the terms of reference. But in attempting to keep an answer general and therefore, if you like, context advice to the committee, if there was clearly a public safety issue that was evident to the department in doing an assessment, the department would attempt to ensure that the relevant department that might have responsibility for safety would provide a view. We cannot make a department, another department, provide a view, but we would be interested in that.

There is an example of a boat ramp that I am aware of which would have a marine safety issue, and so we might well — that is not a land disposal issue in any form, but it is a question of what the department would seek to do. The department would seek to draw attention to that with another department because we do get referrals put us probably far more often than, for example, the marine safety people would. We would try to do that on what I would call a cooperative basis, but we could not guarantee that another department would provide a view. I want to emphasise in this that I am not commenting on the specific example here; I am commenting on the generality.

Mr THORNLEY — Just following up — and again answer within the bounds that you are able — I understand why your department probably does not have marine safety expertise; your primary expertise seems to me to be above ground, if you will. Is there geological expertise or anything of that nature? I am just thinking about the particular incident that I know the committee has in mind, the question of underground erosion and the possible public safety risks. Is that an area of expertise that is resident within the department or is that expertise likely to be elsewhere?

Mr HARRIS — I think — I would keep this at a generic level — the Victorian Coastal Council would potentially have an interest. Expertise? No, it would have to be contracted in. A catchment management authority

may well have some expertise. Catchment management authorities are a part of our portfolio and may well have an interest.

In terms of geological issues more generally, from my background — I used to be secretary to the Department of Primary Industries — the minerals people in primary industries are geologists. Obviously their geological expertise is directed towards development characteristics and resources, but they would have competence in that area. It would normally be, I think, if somebody had a development proposition and there was a question of some uncertainty around geological stability, it would be a matter for the proponent primarily to deal with. It is hard because I am not going to go into the specific, as I have identified, under the committee's terms of reference, but normally I should think if there was such an issue it would be a matter for the proponent.

Mr TEE — In answer to a number of questions, including questions by Ms Pennicuik and Mr Thornley, you indicated that your answers were limited in the sense that you would not answer specific questions or general questions which are outside the terms of the committee's reference. I take it that if the committee's terms of reference were amended by the house to encompass those specific or general matters you would not have any objections to answering those questions in those circumstances?

Mr HARRIS — Not at all. I referred in my opening statement to the guidelines from the Department of Premier and Cabinet. The guidelines from the Department of Premier and Cabinet, which I think, just for the edification of the committee, we brought along copies and were asked to find them, but they are available in different places in any event — make it very clear that it is our obligation to provide you with advice consistent with your terms of reference. I certainly have never had a problem in the past providing advice to the committee in terms of tabling documents and doing follow-up work. As you understand, in the current circumstances I am trying to meet the terms of reference as they have currently been determined to be from the government perspective. If the terms of reference change, we have no problem with dealing with issues.

Mr O'DONOHUE — Thank you for that. I completely understand your position and respect where you are coming from. I suppose it is worth making the point for the record that we as a committee have determined the scope of our terms of reference, they conflict with the government's view and it is regrettable that the government does not respect the terms of reference and how they had been defined by the committee, acting on behalf of the Parliament. I just make that comment in response. I do not expect you to make any comment, although you were free to if you wish.

With regard to the definition of public land values you described, the submission provided by DTF does not actually go into any detail on page 10, which you referred to in paragraph 16 of your submission with which you have provided us this afternoon. Is there any objective set of criteria or list that must be complied with in making such an assessment and determining public land values?

Mr HARRIS — 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 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 CHAIR — Would you provide a copy of those to the committee?

Mr HARRIS — A copy of the guidelines?

The CHAIR — The assessment and the tick sheet that you alluded to as well.

Mr HARRIS — If I could, before I answer that, the guidelines are an interesting document. They date from 1998 and are an object effectively determined at the time of the previous government. As a document, in effect it is about the assessment of a process for disposing systematically of public land. As such, I certainly will seek the minister's agreement to providing you with a copy of this.

The CHAIR — Is there something secret about them?

Mr HARRIS — There is nothing secret about them.

The CHAIR — Are you resistant?

Mr HARRIS — The nature of them is inconsistent with the policy of the government in terms of the document itself, not in terms of that element which we use for assessment. Assessment is what it is — it describes how we go about doing it.

The CHAIR — But they have never been revamped?

Mr HARRIS — The extant document is a document from 1998 and is directed towards the systematic disposal of land. As such, it would not represent government policy.

The CHAIR — But it is still in existence and is still in use?

Mr HARRIS — Yes, I certainly understand the committee's interest in it. I can describe the nature of the land assessment process that we go through. I can do that orally now, but you can also discover it inside the document.

The CHAIR — Please feel free to.

Mr HARRIS — In terms of the document, the reason I would like to seek the minister's view is because, effectively, we would be giving a committee a document which, whilst DSE uses the element of assessment in that, the document itself is about a different kind of policy.

The CHAIR — Why would you need to check with the minister? Frankly, it is well within our terms of reference.

Mr HARRIS — Because the document does not represent government policy.

The CHAIR — But you are still using it.

Mr HARRIS — We are using the assessment element of it. If I had to, to represent government policy, I would have to photocopy bits and scissor out other bits which are — —

Mr THORNLEY — Can I just make sure I understand that response, if I could paraphrase what I think I have heard, and please correct me if I am wrong? The assessment process is part of a larger document. The larger document was created at the time of the previous government. If I am reading between the lines, what I think I am hearing is that the previous government had a much more aggressive or wholesale approach to the disposal of public lands, and that would be reflected in the document as a totality. So releasing the document now may give the impression that the current government has a similar policy, and that is no longer the case. Is that roughly what I heard?

Mr HARRIS — It is, without using the term 'aggressive'. It is systematic — and in fact the document says so. Thus that is why I would like to seek the minister's agreement. I do not know whether — —

The CHAIR — I would like the document without the minister's agreement or otherwise. It would be very helpful to us.

Mr HARRIS — But I would like to seek his agreement, and I am here today representing him.

The CHAIR — Can I just get clarification on that? I understand you are here as a senior public servant.

Mr HARRIS — I am the secretary of the department.

The CHAIR — You are here not as a representative of the minister. I know you read that out at the beginning of your statement. I thought I would just let it go, but if it is used as some mechanism to prevent information being released, that is extraordinary. Yes, I know those government guidelines; indeed I brought them to the committee's attention. Would you like, perhaps as part of that, to explain the status of these guidelines?

Mr HARRIS — No, I think that is a matter for the Department of Premier and Cabinet to explain the guidelines. From my perspective it is quite clear — and I believe the Attorney-General has also advised the committee of this — that officers appear, certainly in my case, as a representative of the minister. I think it is quite

normal — it certainly has been in my 15 or 20 years appearing before parliamentary committees, federal and state — that ministers agree that a document can or cannot be provided.

The CHAIR — It is certainly not my experience in 11 years in the Parliament.

Mr HARRIS — It is not a unilateral decision by the officer.

Mr THORNLEY — You will have recourse to the minister if you have a problem. Stop picking on these blokes.

The CHAIR — No, they have their own responsibilities.

Mr HARRIS — I am quite happy to ask the minister. If I could tell you a bit about how assessment is undertaken. An agency will refer to DTF — usually the Department of Treasury and Finance — that it is interested in examining a piece of land, and that the department will ask us to undertake an examination. 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. Prior to that I think it was the LCC.

Ms DOUGLASS — The Land Conservation Council.

Mr HARRIS — 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, I think the committee just asked a bit earlier about; cultural and historic values; social, community interests; recreation tourism values; resource production values; and strategic values. I think if you want to ask what strategic values are, I am going to have to get one of my colleagues to answer that, but it probably sounds like any other value. Consultation processes will be undertaken and then a recommendation is provided back to the Department of Treasury and Finance, as I have said in my advice, 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. As I have said, I will ask the minister about the guidelines.

The CHAIR — And the check list.

Mr HARRIS — And I will get an answer for you.

Mr O'DONOHUE — In paragraph 6 of your statement you say that a committee of management can be appointed to manage reserved land. When is it determined in general when a committee of management would be the most appropriate form of management for a parcel of land? How do you arrive at that position?

Ms DOUGLASS — Generally we like to delegate land management to a committee of management wherever possible, to make sure that it is local community or local government is managing it; so it is about local management of those areas.

Mr O'DONOHUE — Is there any set of criteria that you choose?

Ms DOUGLASS — No, not that I am aware of.

Mr O'DONOHUE — In paragraphs 9 and 10 you talk about the valuation of land for sale. Obviously a significant part of any underlying value of land is its zoning. Does the department have any input into the zoning of land in preparation for its sale?

Mr HARRIS — Primarily, zoning is a matter for the Department of Planning and Community Development now because the Minister for Planning has a responsibility in that area. I did notice in the earlier committee evidence that the question of zoning had been raised, and it is clear to me, if I can keep this at a generic level, that the government does seek councils' advice on zoning-related issues; but, as I said, zoning is primarily a matter for Planning and Community Development to be able to expand upon that. From a DSE perspective, we do not tend to be directly involved in zoning issues unless there is something in relation to one of our relevant overlays. I guess we might be brought in if there is a relevant overlay for us, but it would tend to be through council-related response to the department. In my experience — which I might add for the benefit of the committee

is fairly limited as I have only been in this job since December last year — it tends to be councils that I have seen as being the entity that has raised a zoning issue with us. Caroline, is that right?

Ms DOUGLASS — That is generally the case.

Mr O'DONOHUE — Presumably the valuer-general cannot undertake a valuation until the zoning has been determined.

Mr HARRIS — This is an interesting element. The valuer-general does rather like highest and best use as a valuation — speaking generally, not speaking so much on any specific issue here — but I have had representations made to me in the past about how difficult that is when something is zoned differently to highest and best use. That is a matter for the valuer-general, and as you can see from this we are unable to direct the valuer-general in his interpretation. It is a matter for him.

Mr O'DONOHUE — Going back to the land assessment process, you said that the assessment and the valuation report is not a conclusive step. Do you have statistics on how often your recommendations in that report are adopted?

Mr HARRIS — I do not have statistics of that kind.

Mr O'DONOHUE — Could you make a general comment about whether predominantly the recommendations in those reports are adopted or not?

Ms DOUGLASS — Predominantly they would be adopted.

Mr O'DONOHUE — Could you give a rough indication?

Mr HARRIS — It would be hard. If you are starting to ask us for specific figures I would have to relate it to your terms of reference, and we might run into the terms of reference issue again. If you could keep it at Caroline's general assurance that would be fine, but if you ask me for a specific number, I would have to ask you to relate it to the terms of reference.

Mr O'DONOHUE — Could you provide a generic percentage — a band, a range?

Ms DOUGLASS — Not off the top of my head, no.

The CHAIR — Has there been an assessment done on that at all? Has there ever been an assessment of that matter?

Mr HARRIS — I am not aware of an assessment. Perhaps I am leaving an inaccurate impression with the committee. It is a functional process, if you like. It is something that must be done. It is not an element of the process that one would track without tracking the entire process, if you know what I mean. It would be an unusual thing for us to simply say, 'Let's go and check how many assessments are adhered to'. The purpose of the assessment is that one is done — in other words, that the information is provided to the decision-maker. The department is not the decision-maker. The decision-maker, generally speaking, rests elsewhere to us.

Mr O'DONOHUE — I understand that.

Mr HARRIS — You would not pull apart a piece of the process and say, 'Let's check what our hit rate is', if you like, because we are not the decision-maker. It may well be that the government has the view 'Gee whiz, we don't think that the decisions are being made terribly reliably. Let's go and check the assessments as part of that process'. We are a functional activity, is what I am trying to get across, I guess. We administer a piece of activity on behalf of the government, but it is an element in the chain, not the final element in the chain by any means.

Mr O'DONOHUE — I understand that. I suppose what I am trying to understand is this competing interest with the valuer-general with the highest and best use, and then your assessment process could often conflict with the highest and best use. I imagine more often than not an assessment by your department would conflict with the highest and best use, as desired by the valuer-general. I am trying to understand how a decision is ultimately made.

Mr HARRIS — The valuer-general is quite separate to the assessment process. The division that Caroline and Maurie work in is quite separate to the valuer-general, who is part of Land Victoria, effectively associated with the grouping involving the titles office. The valuer-general is also required to give an input. This is my point about segmentation in the process. Caroline's division will provide an assessment, and they will draw in competence from other parts of the department. The valuer-general is quite a separate element again in the same process. The fact that Caroline's division might come up with an assessment which says there are serious relevant values here that cannot be managed under a sale would not stop the valuer-general from quite separately having a view within his own terms of competence, if he were asked, in the sale process, as he would have to be if the sale process continued to provide a valuation. They are quite separated, even though they live in the one department.

Mr O'DONOHUE — The proverbial Chinese walls.

Mr HARRIS — More than Chinese walls. As I said, the minister, let alone me, has no power to direct the valuer-general in the performance of the land valuation function. It is a sort of set-and-forget thing at that point. I cannot tell the valuer-general anything about the valuation. Certainly the division that does the assessment cannot tell the valuer-general anything about valuation. Again, he is a professional entity who will provide advice to a process.

Mr TEE — So it is not so much Chinese walls as a number of steps or undertakings which together form a picture on which a decision-maker can rely.

Mr HARRIS — A decision-maker, usually outside DSE — almost invariably outside DSE — will make a judgement.

Mr O'DONOHUE — If I could just move on, as you said, you have read our transcripts from previous hearings. You would have read the evidence that was led at Apollo Bay and that proposed development. The gentleman from the Colac Otway shire described to us the benefits he and the council saw in that project, that it would deliver to the community. We heard from other groups who were concerned about what was proposed on that public land. Can you describe to the committee your department's role in a project such as the one that is proposed at Apollo Bay?

Mr HARRIS — Under the committee's terms of reference I do not believe I can, because the committee is inquiring into sale or alienation of public land, and the government has provided definitive advice on its determination in that matter. I do not think I am able to provide you with advice.

Mr O'DONOHUE — That is regrettable. As I said before, the committee has clarified its understanding of the terms of reference.

The CHAIR — Which it is entitled to do under the standing orders.

Mr O'DONOHUE — I think the question I have asked is well within the clarification that has been provided.

Mr TEE — I take it, though, from your previous answer, that if the house clarified or determined that the terms of reference did include Apollo Bay, you would have no objection to answering that question.

Mr HARRIS — None at all.

Mr O'DONOHUE — This is probably not the appropriate forum to have this debate, but it is not for the executive to be dictating to us its definition of our terms of reference, which we have clarified.

The CHAIR — Further to the land assessment process, you have described the parameters of that and where it sits within the process. There is a number of particular sites that the committee has looked at, and we have evidence from a number of submitters regarding individual sites around the state. I wonder if you could indicate whether the department made a land assessment of a number of those sites. The first one would be the Kew Cottages site. The second one that we have looked at more closely would be the Devilbend site — the 40 hectares of land to the north of Graydens Road. The third one would be the small parcel of land that DSE, as the evidence was put to us, arranged for transfer to the council at the Port Campbell site, that the committee has had evidence about. The fourth one would be the site at Apollo Bay. Did the department undertake any land assessments of any of those sites?

Mr HARRIS — I think, Chair, with respect, I have exactly the same answer. I cannot provide you with advice under your terms of reference as determined by the view the government has put to me, and has put to you.

The CHAIR — That is frankly obstructive and defiant of the Parliament, in my view. It is a very simple question. I am asking you whether a land assessment, which is part of your department's core activities, was undertaken on any of those four sites.

Mr HARRIS — And whilst the committee is inquiring into the sale or alienation of public land, I am unable to provide you with advice on specific issues in relation to — —

The CHAIR — You are able to, you just choose not to. The government may have directed you, but in my view you have a responsibility to the Parliament and the people of Victoria to give free and fearless advice and information. I am asking you again, very directly: did the department provide or undertake or perform a land assessment on any of those four sites? And if so, which ones?

Mr HARRIS — And, Chair, I am afraid, with respect, I have exactly the same answer.

The CHAIR — This is directly obstructive of the parliamentary committee's work. I draw your attention to the fact that the committee has adopted a definition of public land to ensure that witnesses and others in the public are in a position to understand what is meant by public land. I draw your attention to the fact also that the committee has the right, under advice we received, to take its own definition of public land. I am happy to make that available to you. Perhaps I should read it to you now:

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.

In light of the prerogatives of the committee, I ask you again: will you indicate to the committee whether the DSE performed any land assessment on those four parcels of land that I have drawn your attention to?

Mr HARRIS — And, consistent with the advice the government has given you, I do not believe I am able to provide that answer.

Mr TEE — And consistent — —

The CHAIR — Indeed, I have to say that may well be the Attorney-General's view — and he has certainly written to the committee — but the Parliament, in my view, and the committee has the right to request information within its terms of reference as it defines its terms of reference. I indicate that I regard this as direct obstruction of the legitimate work of the committee. I am disappointed that a departmental secretary would engage in that.

Mr TEE — I take it that, consistent with your previous answers, if the Parliament expanded the terms of reference so they would include whether or not local assessment was done on the four parcels of land, you would be more than happy to provide those answers.

Mr HARRIS — I would, or indeed on any other parcels of land, but whilst the difference between the government and the committee remains over the nature of its terms of reference — —

I think it is actually very clear from my long experience in this area I am a representative effectively of the executive. That is the basis on which officers appear. They appear to advise on behalf of the government.

The CHAIR — I would disagree with that, and I certainly place on record my strong disagreement with that point. You are here, in my view, to answer questions to the Parliament at the request of a parliamentary committee and the people of Victoria.

Mr HARRIS — I understand that that is your view, Chair.

Mr TEE — Not necessarily the view shared by the committee, I might add.

Mr HARRIS — It is quite clear to me I do not appear in a personal capacity.

The CHAIR — You appear as the Secretary of the Department of Sustainability and Environment.

Mr HARRIS — I appear as the secretary, and as the secretary of the department I am the representative of the minister and the executive government and provide my advice accordingly.

The CHAIR — Further questions?

Mr KAVANAGH — In response to a question from Mr Thornley, who had in mind the proposed development at Port Campbell, you said something along the lines that if there were problems of the integrity of the land or possibility of collapse becoming apparent, that the DSE would take an interest or it would basically be up to the proponent of the development to show that there was not a risk. Is that right?

Mr HARRIS — The latter half is certainly correct. I was trying to keep this at the generic level of safety. If we thought there was a safety issue, we would try to advise a safety-related agency. If we thought that there was or, indeed, credible advice had been provided that we had encountered to the effect that there was some kind of geological risk, I listed a number of entities that might be relevant inside our portfolio. But the greater likelihood is that the proponent would need to deal with this, as indeed is the case for everything else. In building the roads it is exactly the same position as any other development, the proponent would need to ensure — just as a government proponent in the case of VicRoads — that there was a geologically safe structure for the purpose of the development.

Mr KAVANAGH — How would the risk, if there is one, become apparent to the DSE?

Mr HARRIS — As I said, if credible advice was provided. That is the only generic description I can give, because after that it would depend on the particular circumstance.

Mr KAVANAGH — Who would provide that advice in reality?

Mr HARRIS — It could be anyone. I really cannot answer. I do not want to get back into the committee's terms of reference, but if we have to drive down to specific issues, I will have to do that. If we can keep it at a generic level, my answer can only be that it could be through any source. The department generally tends to be involved in assessments of development, in part because it is the Crown land custodian but also equally because it will be involved, as I mentioned earlier, through the Victorian Coastal Council; the catchment management authority could be involved. We are dealing, for example, with the diversion of the Latrobe River at the moment. That definitely has geological issues attached to it — self-evident to anyone who wants to watch the TV news — and we are therefore engaged as a department in trying to assess information about whether it is possible to divert that river down a particular course. The case of the Latrobe River is a good example of where a CMA is directly relevant to that. There will be an ongoing assessment in that area.

Information may come and in that particular case, just using the Latrobe River as an example, it comes from TRUenergy, whose knowledge as a miner in that area of geological structures is quite substantial. So it will have a particular view about the stability of land, and it will provide that to the catchment management authority. The catchment management authority may wish to engage a consulting engineer to ask exactly that question, and it will go on like that.

Mr KAVANAGH — If anyone can raise the alarm about this, could the committee inform you that there are concerns, and would that evoke some investigation into a particular risk of collapse?

Mr HARRIS — If there is credible information available to the committee. I do not think this is the appropriate forum for you to provide it to us, but if there is credible information available to the committee, it can be provided by writing directly to us.

Mr KAVANAGH — I am sorry, I did not catch that.

Mr HARRIS — It can be provided by writing directly to us. It would be more sensibly provided, I think, not to us but to the relevant agency that is responsible. As I described earlier, unless it is directly relevant to a catchment management authority or the Victorian Coastal Council and in some other way relevant to something that DSE controls, we will then have to pass it on to party no. 3. I used Marine Safety Victoria earlier as an example in relation to a boat ramp development.

Mr KAVANAGH — You disagreed with Ms Pennicuik's proposition that the development she had in mind at Port Campbell involves alienating a certain amount of Crown land. But if Ms Pennicuik's premise is correct — that it does involve the alienation of a small amount of Crown land — would that increase the participating of DSE in the process?

Mr HARRIS — No.

Mr KAVANAGH — No?

Mr HARRIS — No.

Mr KAVANAGH — Even if Crown land is being given to a developer or sold under certain conditions, that still would not justify you taking a strong interest in the development?

Mr HARRIS — Not in the terms that you put the question to me. No.

Mr KAVANAGH — Could you put it in other terms?

Mr HARRIS — Ms Pennicuik asked me a question which related to a specific development and termed that 'alienation'. I answered, saying there was no alienation, and I answered consistent with the terms of reference of the committee. I think the committee has received advice from the government on its view on alienation, therefore when we think there is no alienation of public land in this case it is hard for me to agree with your proposition.

Mr KAVANAGH — So your proposition that DSE should not be involved rests on the premise that this transfer of land or the dealing with land in question does not amount to alienation? Is that right?

Mr HARRIS — No. My disagreement with you rests on the fact that you put an answer to a question, which has its source in the terms of reference, together with a proposition that in some sense we should generally take greater interest if there is alienation or not alienation. What I am suggesting to you is that regardless of whether the department was involved because of something to do with land or whether it was involved because of something to do with environment or whether it was involved because of something to do with flora and fauna or whether it was involved because of something to do with water, if we thought there was a safety issue and it had been drawn to our attention, then we would have an obligation as public servants to ensure that the relevant agency that was responsible for this was informed.

We are at cross-purposes here because I have had to give an answer in relation to a specific development consistent with the government's view of the committee's terms of reference. You and I are currently, I think, exchanging — or I am certainly endeavouring to exchange at a generic level and provide you with advice which says if we were aware of something we would have an obligation to pass it on to the relevant entity, but no more or less than that. It would be nothing to do with whether there was any land involved; it would be simply that, as representatives of the government, we had become aware of something and we have an obligation to pass that on to an agency that might have an interest in it.

Mr KAVANAGH — So any dealing with any Crown land at all does not change the situation one way or the other?

Mr HARRIS No. As I said, we are involved in consideration of development issues because of water, and we are involved in consideration of development issues because of environment and native vegetation; we are not just involved because of land. But if we were aware of an issue, we would have an obligation to pass it on to somebody. It would have to be credible information, but we would have to pass it on to somebody. I instanced the boat ramp one because we think the information is credible in that case, and so we did actually believe somebody should be informed, but we are not in a position to judge marine safety issues, and so that is as far as our interest goes.

Ms PENNICUIK — Mr Harris, as Mr O'Donohue said, it is regrettable that we are in this position that you have been put in. We have had 140 submissions from the public on the garden-variety, publicly accepted dictionary version of what public land is, and we have had mischievous letters and rulings from the Attorney-General trying to put a spanner in the works with regard to what public land is. Unfortunately you have been caught up in this. It is really stymieing the amount of information that we can get, which the public wants to know, about land that is being sold, leased out or alienated, and it is land that belongs to them, and much of it under the control of your department. So it is very regrettable that you are put in this position and we are all put in this position, and the public, I would say, is pretty displeased about the whole issue. But that being said, I am assuming you have had a letter from the Attorney-General advising you of his view?

Mr HARRIS — I have had a letter from the Attorney-General.

Ms PENNICUIK — Can you let me know if you have ever had such a letter from a minister before disputing the terms of reference of a parliamentary committee?

Mr HARRIS — I am going to have to draw a lot on memory, but I believe working for the federal government in the past there was a dispute with the Senate over a terms of reference that I was involved in. I cannot remember the issue and I cannot remember how the advice was provided, but the government definitely differed with the Senate over terms of reference and, again, officials were advised of the basis on which they appeared. I cannot remember whether it was by correspondence. But I know that there have been, from time to time, disputes between the executive branch and the parliamentary branch over the nature of terms of reference. It is, I guess, part of public life. But I can recall a dispute. I cannot remember the specific circumstances. My memory is blotted out by a particularly humorous remark made to me by a minister about this which I am not going to repeat. But I cannot actually remember the issue; I can just remember the remark.

Ms PENNICUIK — As I say, it is not really the place for debate, but Mr Davis has already pointed out that it is the role of the committee to establish its own terms of reference and it is not for a minister of the Crown to be interpreting them for himself, in our view, and then advising senior public servants that they cannot speak within the terms of reference that have already been decided by the committee; but you have obviously taken your own view on that. I just wanted to go back to a generic discussion about the impact of private development on land immediately adjacent to public land, in the dictionary definition of 'public land'.

Mr HARRIS — Crown land.

Ms PENNICUIK — Crown land.

Mr HARRIS — Crown land.

Ms PENNICUIK — I think Ms Douglass said you would not be able to know exactly what is going on all over the place, and I accept that you cannot know that, but therein lies a problem. If there is going to be an impact and that is going to have a safety implication and you do not know about it, there is an issue that probably needs to be looked at, so I leave that in the air.

Mr HARRIS — Normally if there is a development there is a council, so it is not just DSE as Crown land manager that in some sense has responsibilities here. Primarily the development will need to proceed on a basis that council is satisfied with. As well as that, there would be building regulations. If we are still talking at a generic level, the Department of Sustainability and Environment is not the entity responsible for vetoing or otherwise approving development on a generic basis across the state just because we are the Crown land manager. We may have knowledge, but I think it is an unreasonable expectation to think that we could deal with each and every one of those issues. Local government, building regulations and those sorts of areas will tend to deal with these things. I

was just advising the committee earlier that if we knew of something and we thought it was credible, we would want to pass it on to the relevant safety entity.

Ms PENNICUIK — My question was not really that. My question was: if such a private land development had an impact on land that was under the jurisdiction of the Department of Sustainability and Environment, and if that was a safety issue and it caused a safety incident where someone was hurt or killed, for example, where would the liability lie? Who would be liable?

Mr HARRIS — I have a duty of care to every one of DSE's employees under the occupational health and safety regulations.

Ms PENNICUIK — No, I am talking about members of the public.

Mr HARRIS — It is hard to say who would have the responsibility to a member of the public. It would be a legal issue — in other words, it would need to be determined. As you know, public liability has shifted quite a lot in recent years, and there has been a substantial body of recent litigation that I am not completely across, but I know that it has shifted quite significantly, so it would depend, I guess, on the circumstances.

The CHAIR — Do you have recent advices on your liability on public land?

Mr HARRIS — I should think we would have recent advices.

The CHAIR — Would you make those available to the committee?

Mr HARRIS — I will ask the minister whether I can make them available, yes.

Ms PENNICUIK — I have got another question for Ms Douglass. You mentioned that when looking at the assessments certain community groups might be approached. If there are other groups that approach the department that you have not approached, are they able to provide input?

Ms DOUGLASS — Certainly. At the time of the assessment we would listen to whoever raised an interest. We would obviously go out and seek groups that we know would have an interest, but yes, we would listen to them.

Ms PENNICUIK — Do you always do that without fail, or do you just do it on a case-by-case basis?

Ms DOUGLASS — It would be on a case-by-case basis.

Ms PENNICUIK — Can I ask you on what criteria you would decide to do that or not do that?

Ms DOUGLASS — It is generally based on the actual land in question and the assessments being undertaken. Some land clearly has some connections with the local community or indigenous groups or whatever it might be. There might be a building on it, so historical groups might have an interest, and some land might be vacant. There are a range of stakeholder groups, such as field naturalists, that we will generally contact if there are other values that we think might be at that site, and they might have an interest in that.

Mr HARRIS — If and where there is a committee of management it is drawn from the community, so you do tend to get community input through that process as well.

Ms PENNICUIK — I am not sure whether this is best answered by Ms Douglass. Mr Grealy has not had any questions yet, but this one is to Mr Harris. Some submissions to the inquiry have commented on the complexity and the dated nature of the framework. Do you have any comment on that?

Mr HARRIS — The framework?

Ms PENNICUIK — The legislative framework regarding public land. Certainly many of the submissions have been submitted because they have seen that the processes have failed them and that the value of the land to the community or its existing use seems to have been overridden, and, whatever assessment is made by DSE, the decision has been made at some place to override what the community groups have seen as the value — whether that be an environmental value or the community value or other public use values of that land.

I do not know how many submissions you had a look at, Mr Harris, but you would see that that is a fairly common theme, and you would have to agree that there is a problem if the assessment process is having the outcome whereby the community groups Ms Douglass was saying have been included in the consultation — and many of those community groups, certainly the ones we have looked at at the site visits we have already had, have a long historical link with that site and have very, very detailed knowledge of the site — their assessment of the uses seems to have been overridden in the final decision. So there is obviously an issue with the process, so I wonder whether you have any comment on that?

Mr HARRIS — I think the nature of development involving land somewhere near Crown land is such that it will always involve dissatisfied groups. It just is that some people would prefer everything to remain exactly as it was. Sometimes it is not the process and the complexity of process, sometimes it is just a preference for a different outcome.

In terms of the nature of process, there is a number, and they do not neatly fall over the top of each other. Some people dislike the planning process. Some people dislike VCAT. Some people dislike the nature of the land assessment process that we undertake. So the targets are many and varied here. I do not think it is therefore a simple question to ask whether the legislation is too complex, it is much more a question of asking how many people are likely to be satisfied even if you change the nature of the process. That I think it is the core of the issue here.

The Department of Sustainability and Environment is often the recipient of criticism — something I have learned since coming here from the relatively calm Department of Primary Industries! — and a lot of it is reflective of that. It is more of a view about the nature of an individual development than anything actually to do with the process. People though do feel dissatisfied with process as well, but when you disaggregate it, as I have tried to do with some of the cases that have been referred to me, it is a different process every time. As I said, some people dislike planning, some people dislike the council, some people dislike the fact that VCAT has the power to overturn a decision. I have not found in my nine or so months in this job a generic problem with the process; I have found a lot of specific, individual problems.

Mr TEE — So even with the best of processes some people just do not like the outcome, is that what you are saying?

Mr HARRIS — That has been my experience, and I think Crown land managers certainly encounter that criticism quite a lot. There is a view among some groups that DSE should be more proactive, and at the same time there is a view that DSE should be inactive. Native vegetation is an absolute classic version of this. You cannot win on native vegetation, and our people regularly take quite a lot of criticism — in my view a lot of it is unjustifiable — because people did not get their way on a native vegetation issue. Such as it is, we are in the public sector, and we live with that. But I have not found in my time in this job that it is a question of a generic failure of process. I have found more that it is a dissatisfaction with outcomes in individual cases.

Ms PENNICUIK — Mr Harris, I suppose what I am saying is that if you look through the submissions, there seems to be a theme of the value of the land as open space or low-key cultural issues or the continuing use of the land the way it is having to compete with pressures for housing developments or other sorts of commercial developments where money gets involved. That is where the tension is coming out, and that is where the disappointment is. Land that the public thought should have the continuing public use that it has had or as public open space — and this is land under the control of your department — is somehow being given over to a housing development or a coastal tourism development on what is currently open space. That seems to be a failure of process. Are you unable to articulate the other values of the land, which are non-commercial? Is that a problem? Is that not able to be done?

Mr HARRIS — I know exactly what you are referring to, and we will tend to draw attention to those values. But as I think I was trying to say earlier, the ultimate is that we are an element in the process, the valuer-general does another element of the process, and I listed all the functions the department has. We have a number of elements in the process. But overall the decision-maker on the disposal of land is likely to be outside this department. In the end the decision made by a particular minister — because, delegated or not, generally it will be a minister — will be reflective of that minister's overall judgement. In the end it is a reflection of the democratic process: a minister, elected through a democratic process, will make a judgement, and if that minister ultimately makes so many adverse community judgements, in the end it will reflect on the government. But I do not think it is

a reasonable proposition to expect the public sector to do more than ensure that the minister gets the best advice that we can provide.

Ms PENNICUIK — I think perhaps I have not put it quite right. A lot of this land is in desirable places, so its commercial value is always going to be very high. How does the department convey the pricelessness or whatever of the other values of it? How does it make that clear?

Mr HARRIS — For a start, we try very hard not to determine it in a dollar sense. It is a lot better in my experience that if you are dealing with an objective fact on the one side — this, as you say, is worth a lot of money — that on the other side you deal with it subjectively. Subjectivity, which we agreed earlier is part of the land assessment process, means that we will attempt to emphasise in a descriptive form the values that we can attribute to this piece of land based on the information that we have gathered. In the end, though, it is a call generally made outside the department as to whether or not this matter should be proceeded with.

Ms PENNICUIK — I understand that.

Mr HARRIS — All we can do, as I said, is give the best information we can. When I was developing the positions that we could probably offer to the committee, I wrote myself down something on the changing nature of the values, which is actually quite important — that is, the nature of the values on which we assess coastal foreshore land. Coastal foreshore land might have been preserved 100 years ago on the basis that the highest value was to suppress foreign invaders, and it was a good place to put cannons. But nowadays we tend to support coastal values via regulation rather than by necessarily saying, ‘We have to own this for the purpose of some particular land value’. We will tend to do that because it is actually more effective. If I can extend this to climate change, the government owning the coast for the purpose of climate change is unlikely to do very much to deal with it. The important thing is that people do not build in areas where dunes are likely to be knocked about by storm surges and things like that.

Whereas 100 years ago we did not deal by regulation, now it is very important that we deal by regulation. That is not to say we should dispose of all coastal land — quite the opposite; it is simply to say we have different regulatory mechanisms for dealing with something that is tremendously important. Simple ownership does not get you there. Owning foreshore land will not stop the storm surges. The important thing to consider is what we are going to do to deal with storm surges under climate change in the future, as an example. That is the coastal council case.

Ms PENNICUIK — I have something else to ask.

The CHAIR — I am conscious that Mr Peter Hall, who has just joined us, has not yet had a question.

Mr HALL — I have a quick question. First of all, I apologise for my inability to attend the first part of this hearing, but I note from the copy of your opening statement, Mr Harris, that you spoke about leasing and licensing of Crown land. My question is: in respect to those areas of Crown land that are leased, what is the process you go through to determine the lease value of that Crown land?

Ms DOUGLASS — It is valued by the valuer-general as well.

Mr HALL — So it is an annual valuation by the valuer-general?

Ms DOUGLASS — I am not quite sure what you mean by that.

Mr HALL — I am interested to know how you actually determine a Crown land rental on a piece of Crown land that is leased to somebody, and in particular I am interested to know whether or not improved value of that Crown land is taken into account.

Mr HARRIS — If the valuer-general is involved, then the valuer-general will tend to give the land its highest and best use. The government would have to take account of the advice of the valuer-general. But you are asking a question, I think, that is hard to answer in a generic sense, in the way I have been trying to answer questions from the committee to date. This is a debate we were just having, which the Chair can undoubtedly inform you about — but in establishing a lease value for land, we will tend to take into account the valuer-general’s proposition, but I am not sure what else — —

Mr HALL — I suppose I can clarify my question in this way: I am interested to know, for example, if on an area of Crown land that is leased the tenants undertake some capital improvements to that land — it might be the golf club building a new clubhouse or something of that nature — whether or not the rental that is set takes account of the improved value, the improvements made to that land, and I am happy to have that taken on notice.

Mr HARRIS — I will just get a clarification because I need to know if we need to take it on notice.

Having consulted with Mr Grealy, we will get the valuer-general give you an answer on that, so we will take it on notice.

Mr THORNLEY — I just want to clarify a couple of points. Firstly, you talk about things as having subjective or objective value, although I have to say some of those things when I hear them sound more like they have quantitative and non-quantitative values. ‘Subjective’ sounds like different people could form different judgements. Saying something is rare or that there is no other example of it or something like that may be a non-quantitative judgement, but it would seem to be an objective judgement. Can I just understand how you use those phrases? Am I correct in assuming that ‘objective’ in the way you have described it is partly a synonym for ‘quantitative’ or do I misunderstand?

Mr HARRIS — No, I think I am probably going to stick with subjective versus objective, because rarity, I think, is demonstrable. In fact, we could say something was unique, and that would be it — it was one of that kind — and I would tend to think that was much more objective.

Mr THORNLEY — So that is objective, yes.

Mr HARRIS — It would be — I was going to say ‘rare’! It is not perhaps common to define something as self-evident as that. So you are left to say something is significant, highly significant. That is the sort of terminology we use for ranking.

Mr THORNLEY — Those are matters of judgement.

Mr HARRIS — If you were a different entity, you might well say, ‘That is not significant to me at all’, but we are the ones making the assessment, so it will be significant or highly significant from our perspective.

Mr THORNLEY — I want to come back to the public safety issues. Again, obviously, you will confine your answer to the terms of reference, but just thinking generically about the sale or alienation of public land or, for that matter, Ms Pennicuik’s framework of developments on private land adjacent to public land, what roles or processes would your department have if there were a proposal to build a nuclear power station either on public land or on private land adjacent to public land, and which other agencies might you refer to in the same way as you mentioned you would refer marine safety issues to other agencies and some of these geological issues? There may be other agencies. I am just thinking there is probably a welter of public safety issues.

Mr HARRIS — A nuclear power station?

Mr THORNLEY — Yes.

Mr HARRIS — Fantastic! I think the state has legislated against having nuclear power stations — I believe that is correct — in Victoria. Notwithstanding that, I should think that would be a matter for a full environmental impact assessment process, and I would have thought if it was on private land, I guess that is the subtext of what you are saying, if there was a proposed development on private land — —

Mr THORNLEY — If there was a proposal to alienate some public land for that process, for example?

Mr HARRIS — In terms of the terms of reference, I do not think I could answer your question, so if we kept it at the generic level, which is that land somewhere near Crown land is going to have a nuclear power station on it, I think I could say on a generic basis that a full environmental impact assessment would be required, and obviously the minister for the environment would be involved in considering the results of that, along with the Minister for Planning, and the department would undoubtedly be involved in attempting to frame with a potential developer any such proposition. But, as I said, my recollection is that the state has legislated against having nuclear power, so it is simply not a tenable proposition, in any event.

Mr THORNLEY — If that legislation were to change and such a proposition were brought forward, I am wondering if you could quickly outline the types of assessments? I do not know much about this, but I presume there would be water-related assessments, there would be biodiversity assessments; there must be quite a wide range of public safety and environmental safety assessments that would need to be conducted?

Mr HARRIS — Under the environmental assessment process required, unless the Minister for Planning gave a specific focus, there would be the widest possible focus. Indeed, you are absolutely correct — air quality, road access, any and all emissions standards, possibly going to disposal issues in terms of nuclear waste, geological issues. You do not build power stations on geological faults of any kind, nuclear or otherwise, that sort of thing, and then there would be a range of site-related issues regarding this. Nuclear power stations require cooling water, so there would be an awful lot of water-related access information, for example, but it would be a very substantial task, I would have thought.

Mr THORNLEY — Can you think of any other proposal that would cause a greater level of scrutiny required for an accurate assessment than that sort of proposal, off the top of your head?

Mr HARRIS — I think any guess I would have to make like that would be highly speculative. I could not imagine it, but I do not think I should speculate in front of the committee.

The CHAIR — Precisely on Mr Thornley's general point and not in the case of a hypothetical proposal, but in the case of a practical proposal in which we have a submission regarding the government's proposal to build a desalination plant on private land very near to the coast, I am trying to understand exactly in the same mode what sort of assessment the department will undertake of the impact of that development on the public land along the coast?

Mr HARRIS — The government is currently engaged in undertaking the preliminary environmental consideration that goes with putting a proposition in front of the planning minister for whether an environment effects statement should be developed, and that is going on as we speak. It is going on in Crown land; it is going on in private land; and it is going on to cover all the issues that I outlined to the council.

The CHAIR — Just in the way you indicated to Mr Thornley, an environment effects statement would be normal in such a case as a way of assessing the impact on these important pieces of land. Broadly, is it your view that such an assessment would be normal in the case of a large industrial size desalination plant of the type under consideration?

Mr HARRIS — As I said, the department is currently engaged in developing just that work, to put a proposition in front of the planning minister, so the planning minister would make the decision, in the case of Mr Thornley's example or in the case of your own example, and the work would be pretty much the same, I would have thought. The proponent, in this case us in the case of the desalination plant, has to undertake all that assessment work that I have described, and puts that together in a very large document for the benefit of the planning minister and then seeks the planning minister's view whether a formal environmental assessment should be undertaken.

The CHAIR — Is there a conflict in you being both the proponent and the department undertaking those assessments?

Mr HARRIS — No, because we are not the decision-maker. The planning minister is the decision-maker. In other words, regardless of whatever we put forward, the planning minister will make the decision on this, and indeed if there was any conflict, it would be a conflict, I would have thought, in favour of environmental assessment, but I can tell you there is not any conflict because we are not the decision-maker, so we are the generator — —

The CHAIR — But you are putting the evidence as to whether there should be an environment effects statements and you are also the proponent?

Mr HARRIS — But we are the environment department.

The CHAIR — Do you see that there may be some — —

Mr HARRIS — No. I do not see any conflict there at all.

Mr THORNLEY — Are you still in favour of desal, David, or have you gone off that?

The CHAIR — We are in favour of good processes, Mr Thornley.

Mr HARRIS — I think, in fact, as I said, if you could find a distinction, it is the distinction between the proponent being also the environment department. One would have thought that that would favour an environmental assessment if you thought there was a problem. I do not think there is a problem because the planning minister will make the decision and he will make the decision presumably on the quality of what we put up and his own judgements, so we are putting, as I said, about the largest amount of work we can into all the environmental outlines, all the issues relating to the siting of a desalination plant near Wonthaggi.

Mr O'DONOHUE — Can I just follow on from that? Would that include an assessment of the CO₂ emissions that are likely to be generated by the plant?

Mr HARRIS — I cannot answer that specific question, because I do not have that knowledge.

Mr O'DONOHUE — Can you take it on notice and respond at the earliest possibility?

Mr HARRIS — I am afraid that the difficulty of making me take it on notice is I can take it on notice under your terms of reference, but I am not going to be able to provide you with the answer. I am just trying to help the committee with comment here. I could have not answered any of those questions and just stuck to the terms of reference. It is very difficult for me to do this.

In terms of trying to help you with advice, when you say 'CO₂ emissions' the reason I cannot answer that is because I know that the government has made a policy statement in relation to offsetting the CO₂ that relates to the power use of the plant, so we will require that renewable energy certificates are provided as an offset for all of the power use of the plant and all the power use of pumping the water. That is a policy decision and I think you asked me the question in the context of what effectively will the planning minister do with our environmental advice. That is why I cannot answer the question, because I do not know.

Mr O'DONOHUE — Perhaps I could rephrase the question and hopefully you can answer it. In analysing in a preliminary way whether a full EES is required or not, or putting it to the minister to make that decision, as part of the environmental considerations you look at, do you look at the CO₂ emissions that are likely to be generated by such a facility regardless of what the facility is, whether it is a desalination plant or whether it is some other facility? Is that part of your normal preliminary investigatory process?

Mr HARRIS — It would be part of my department's normal investigatory process, but for example I know it has been contentious in the case of both mines and roads because roads encourage car use, car use encourages emissions. How far do you take the roads environmental assessment? In the case of a mine, I think the same thing has occurred. The product is ultimately going to be used in a different process. Are you going to take account of emissions relating to that as well? Again, I do not think I can give you a specific answer that covers all circumstances. I know that it has been a matter of contention and that ultimately the decision is made by the planning minister, to say, 'I want this taken into account and I want that taken into account'. In the case of the desalination plant, as I said, the government has made a policy decision, which is quite separate from the environmental assessment activity, that the emissions relating to the plant's power use — that is, the generation-related activity — and the pumping which has a big power use as well, will be offset by the requirement to produce sufficient renewable energy certificates to offset that.

Mr O'DONOHUE — Can I ask you a question on land swaps, and I will give you an example if you can answer it to the best of your ability in your capacity as you see fit? We had a submission from the Warrnambool golf course and their desire to swap land with DSE in effect to achieve an outcome for the golf course. What sort of process does DSE have to deal with such a situation, with a proposed land swap arrangement?

Mr HARRIS — To avoid clashing with the terms of reference issue I would need to keep that at a much higher level than answering about the Warrnambool Golf Club.

The CHAIR — There is DSE land involved there, though.

Mr HARRIS — In terms of land swaps there is a — —

Mr TEE — But not necessarily public land.

The CHAIR — DSE is responsible for that land.

Mr HARRIS — It might be safer, I think, for me not to answer given the terms of reference issue. The struggle is to try to find you a generic answer on land swaps. The department is involved because we are, as I said, the land custodian in a number of areas but they are well outside the terms of reference here. The terms of reference are about sale or alienation, and we do not see that that has occurred in this case.

Mr O'DONOHUE — If you accept the Attorney-General's definition of public land — if you do, I do not, but if you do — and there was a situation where there was a piece of land and hypothetically speaking someone, a group or a person or corporation, who held private land came to you with a proposal to swap that public land which was public land as per the Attorney-General's definition, how would the department approach such a situation? Do you have a formal policy on dealing with those sorts of situations? Would it be on a case-by-case basis? How would you go about it?

Ms DOUGLASS — It would essentially be dealt with in terms of the same assessment process that would be undergone for the piece of land in question that they were seeking to swap.

Mr O'DONOHUE — If I could just go back to some of the answers you gave in relation to that assessment process, you mentioned groups that have an interest in a piece of land. Again there is no set of criteria of who should be contacted. I suppose I am just trying to understand the difference, say, for a private landowner. If I am a private landowner and I am proposing a change of use for a piece of land that goes before council in the normal planning process, any person — whether they have a direct connection or not — is entitled to make an objection. That same process does not apply to you?

Ms DOUGLASS — No, we do not have a formal objection process in the same way as a planning permit.

Mr O'DONOHUE — Whether people are aware of a proposal would be determined very much by who you inform and who you choose to inform?

Ms DOUGLASS — Are you referring to a proposal on private land?

Mr O'DONOHUE — No, on public land.

Ms DOUGLASS — On public land. Any assessments we undertake, we would have a general range of groups that our regional officers would be aware of and they would certainly deal with these groups on a regular basis. It is those groups that they would contact or be involved with, so that would include — as I said before — local government, field naturalists, historical societies or committees of management that would be associated with that particular site.

Mr HARRIS — Perhaps if I could help given I see the direction you are going in: there is a very large number of small land transactions that the department has on its books regularly. These are primarily for the purposes of assisting either individuals or the community in solving what might be considered to be minor tenure problems. Going down the path that a council does by advertising a development proposal, in most cases if you are — I call them the 'tidying-up list' — there is a very large number of tidying-up issues, for example, when you get disused reservations, so that there is no longer any need for this and an entity, a farmer for example, or a community group that cannot cross a piece of land because it is held as a reservation. We are probably going to have this in the future in water areas, there will be strips of land alongside irrigation channels; as the channel is no longer used, the landowners on either side of that channel will be unable to use it. So these tidying-up issues go on continuously, and there is a largish number of them.

To try to run a sort of council advertising process for a development would be, I think, well in excess of the sorts of numbers that councils normally handle. They do not proceed incredibly rapidly because there are so many of them, so adding yet another step in the chain is likely to have a cost, as well as potentially make some people happier that they were able to read about this as an advertisement in the paper. I would suggest that going down that path may not necessarily be so productive as it might at first blush seem.

Mr O'DONOHUE — I was not making a comment on whether it was productive or not. I was just trying to understand the differences in which a private landowner and the owner of public land — the different systems

really — in effect apply. I agree with you: having the government or DSE to comply with the planning system that the government has put in place would be incredibly burdensome on councils. The planning requirements that councils have to meet already are incredibly burdensome, but I think that is more a reflection on the planning system rather than on the work of DSE.

I am just trying to understand how the government deals with its land differently to private landowners, and that obviously is a significant difference. The DSE does not have to go through the same processes; it does not have to advise the same groups or people; it does not have to take objections from anyone who wishes to make one; it in fact has a completely different system when it comes to the change of use of public land, the sale of land, or indeed the alienation of land.

Mr HARRIS — I think that is because in the ultimate we are the Crown, so your distinction is rather artificial when you say ‘private versus the department’. In this sense, as I said earlier, we are the custodian of Crown land, so you go back 180 years, we were actually making — and we still do make — Crown grants. We take land out of what is the entire state and provide it, and that process therefore has 180 years of testing. We issue land. We do it today, we did it 180 years ago, we keep doing it and when we get to this small land-swap type issue, will primarily be trying to do it when we are trying to do it for the community’s convenience. Now some people might say, ‘That is a very bad thing, I dislike you making it convenient for this community group to be able to incorporate this piece of land, because I personally still want to use it’.

We have fencing disputes over that sort of thing. Should you be able to fence off a piece of land? There is a safety consideration in that. Would we give this strip of Crown land so that you can fence off access to a river bank? We probably would not do that, we would probably require the fencing, but there is a good reason why the public sector is as it is, and it is different to the private sector. And it is in the nature of being custodian of Crown land that we are involved in these sorts of transactions and the process supports us being involved in that.

Mr O’DONOHUE — Can you see, though, the point I am making, that in effect having two very different systems can lead to what is perceived and what may be unfair outcomes? And that could be from any different perspective.

Mr HARRIS — I did note your comments earlier on the planning system, and I think they are of probably greater relevance than are the issuing of Crown grants or the dealing in Crown land. It is necessarily the case that the land custodian attempts to satisfy community interests. We may fail, we may favour one part of the community over another, and as I said earlier, that is the nature of doing anything. You could do nothing and probably get less criticism, but we will be involved in doing this, it is part of our job. As I said earlier, I think a number of the community problems relate to not just a single element of the process but more the dissatisfaction with the outcome at the end of the day.

The CHAIR — I have a couple of further questions; one relates to your web site. The DSE website states that the department is Victoria’s lead agency for sustainable management of water resources, climate change, bushfires, public land, forests and ecosystems. Can you explain the words ‘public land’ there in the light of your failure to answer questions on the broad community understanding of public land?

Mr HARRIS — No, I do not think there is an explanation required. We are the Crown land agency. Under Crown land there is both public land and government land, and the committee’s terms-of-reference issue with the government relates to that distinction between public land and government land.

The CHAIR — So we have got terms of reference about public land, you are in charge of public land and government land?

Mr HARRIS — That is correct but your problem is not about whether public land — —

The CHAIR — I am just trying to understand how you reconcile that.

Mr HARRIS — I reconcile it this way: the issue between the government and the committee is about whether you can sell or alienate public land. I think the government’s position is that you cannot, and yet you can sell or alienate government land, so that is a definitional issue which is quite different from the statement that the department makes, because we are indeed responsible for public land. We are responsible for government land too, in some cases, but we are certainly responsible for public land. I do not see it as at all a problem.

Mr KAVANAGH — But your definition does not say public land and government land?

Mr HARRIS — No, it does not, but that is because the one is larger than the other — a lot larger.

The CHAIR — We agree.

Mr HARRIS — The size of the national parks alone would outweigh any government land. I think the nature of what the government has sold in recent times would be pretty tiny and what the government has added to national parks would be huge by comparison.

Mr KAVANAGH — So your view is that for the purposes of DSE there is no difference. There is only difference for the purpose of this committee; is that right?

Mr HARRIS — No, I would not say that at all. I am simply saying that the department has picked for the purposes of its banner statement the majority element of its land tenure, public land.

The CHAIR — Which is what we are interested in. I must say I am not convinced with your resolution there, but leave that aside: my second question relates to coastal policy, for which, directly or indirectly, your department shares the major burden of responsibility, with some significant input from the planning department. How do you see coastal policy operating, both the statements that are in operation now in Victoria and the draft that is out for discussion at the moment? How do you see that operating in terms of large developments along our coast?

Mr HARRIS — The Victorian Coastal Council, I think, has a draft management plan out at the moment.

The CHAIR — They do.

Mr HARRIS — It is the Victorian coastal strategy; as I said, it is a draft, so it is yet to be finalised by the council and then goes to the minister for approval.

The CHAIR — There are existing statements in position, too.

Mr HARRIS — Yes, there are. I am not sure where this is going, because it is way outside the terms of reference, but, as I said earlier, I am quite happy to talk about the generality of what DSE does for the benefit of the committee. I know there is a draft strategy out. I know that it draws attention to a range of future issues. The council, in the end, I think is a recommendatory body to the minister, so that ultimately the minister will make a final decision on the nature of the coastal council strategy document and has yet to do so. The extant document would be the 2002 document; is it?

Ms DOUGLASS — Yes, that is right.

Mr HARRIS — And this is the standard updating process that we are undertaking at the moment. I am not sure where I should go with it.

The CHAIR — How does the role of those strategies — the current and the one under discussion — impact around the coast in terms of public land, however you wish to define it and certainly within the terms as we define it?

Mr HARRIS — I think that the purpose of the strategy document is to try and indicate to the minister areas of long-term need for policy improvement in relation to coastal policy. For example, I mentioned earlier things like climate change and storm surge. Although I cannot bring the specifics back to mind, I am quite sure that the council will have made comment on that.

This document is then used by individual councils and by catchment management authorities, because catchment management authorities have responsibility as well. This document will be used by them as an input towards their regulatory responsibility. The coastal council does not have, of which I am aware, a regulatory responsibility, but if the minister endorses the strategy, then there will be a series of actions under the strategy, and they will be directed towards regulators. Those regulators may have an interest.

You have mentioned large coastal developments. Obviously individual councils will want to take note of the coastal council strategy. Individual shire councils, if you like, will have to take note of that — and should take note of that — as well as catchment management authorities in establishing whether developments are appropriate or inappropriate. It is a good mechanism by which the regulatory process updates itself. I do not think the coastal council, to the best of my knowledge, in its draft strategy is saying ‘ban development’ — not large-scale development on the coast.

The CHAIR — I am trying to understand the interplay here — how this operates.

Mr HARRIS — As I said, it is a strategy document. Once the minister endorses it as an educative document to regulators, both core government — catchment management authorities that work with us — but also, next level down, government in terms of local governments’ interest in managing these things. There is a big community consultation process. Catchment management authorities have come to me and talked about how much benefit were the coastal council strategy sessions, where they have developed a draft. It lifts the profile, if you like, of the kind of issues that are likely to be faced in the future, and it has got a recommended series of actions in it; I am pretty sure that is right.

The CHAIR — Does it protect the coast?

Mr HARRIS — It is not a regulator; therefore it cannot change the law and therefore it cannot prevent a development occurring, if that is where you are going.

The CHAIR — So it does not protect the coast in a direct way, is that what you are saying?

Mr HARRIS — No.

The CHAIR — Coastal values, for example?

Mr HARRIS — It draws a profile, if you like, to future issues that are going to be of relevance in coastal environments.

Ms PENNICUIK — Just following on, Ms Douglass, to the issue assessments, you or Mr Harris mentioned that your role was just to make the assessment and then there is a valuer-general role, and they are separate — I accept that. After you make the assessment, there is no further role for the department. There was a question earlier about whether you had a tally of how many of your assessments were followed — as in, if you made an assessment and recommended to the particular agency or department that its land not be sold, you are not aware of how many times that has been adhered to or not?

Ms DOUGLASS — If a decision is made by the responsible minister to sell the land, then we might have a role in administration in terms of removing reservations or revocation of reservation, but that is another step in the process further down the chain.

Mr HARRIS — I mentioned the surveying function as well. If a boundary check is required, the surveyor-general will have a role.

Ms PENNICUIK — However, if you have made an assessment to not sell that land and that land has been sold anyway against your assessment, there is no further role for the department?

Mr HARRIS — As I said, the responsible minister will generally make the decision or the delegated power will go to an official, but it will be a ministerial-based decision. That is a matter in the end, as I said, for executive government.

Ms PENNICUIK — So there is no appeal process or anything by the department, to say, ‘We think you made the wrong decision. Should we look at that?’.

Ms DOUGLASS — No.

Ms PENNICUIK — That brings me to what I am going to make as a comment now. Mr Harris, you said that you think people are basically just upset with the outcome. I think if you look at the submissions we received it is not just the outcome that people have a problem with, it is the process. I am just trying to get the process out.

People feel like they are shut out of the process or they have not been heard in the process and they are also not happy with the outcome, but it is not just the outcome. I just wanted to make that statement.

With the agencies, agencies identify land that they might regard as surplus, and that is then assessed by your department. Do you have any role in identifying surplus land?

Mr HARRIS — I do not think so.

Ms DOUGLASS — Other than our own land, but we have a lot of Crown land, so, no.

Ms PENNICUIK — Sorry, I did not hear that.

Ms DOUGLASS — We have a lot of Crown land, obviously; so, no.

Ms PENNICUIK — And you do have a role in identifying surplus land of your own — public land?

Mr HARRIS — No, it would not quite work that way. I think I was characterising this a little earlier in the discussion of the guidelines document that we are going to seek the minister's view on. The department does not sit here and undertake a conscious process where it says, 'What land can we dispose of?', because we are the custodian of all the land. So the predominant role by a massive margin — —

Mr DAVIS — Even your office sites and depots and so forth?

Mr HARRIS — From time to time those issues will come up, but as I said, our predominant position is that we are the custodian, so we spend all our time on that. We do not spend much time at all on whether we should dispose of a piece of land. In that sense it is quite a different position to agencies that are spending their time trying to potentially reallocate land resources.

We will have some. I think the department did have a piece of land to be disposed of last year when I first came into this job, but it is like that — a piece of land. We hold a third of the state or something like that, but we were disposing of 5 hectares or something like that. It is not a function that is very high up at all in the department; it is a function that occurs entirely through a mechanistic process. The amount of time the department puts into this is infinitesimal; it would not be raised in a policy sense at all. Other departments, though, because they are large entities which have to turn over land stock continuously — housing is a classic — will be much more involved in this than we will, as an example.

Mr HALL — What if you received a request from a local golf club or a local committee of management to actually purchase Crown land that they were leased for a period of time? Do you ever look at selling Crown land in those circumstances?

Mr HARRIS — We get that sort of request from time to time.

Ms DOUGLASS — We get those requests from, say, a neighbouring landowner; a small one.

Mr HARRIS — We would not get them so much from the committee of management, because they have to have the money. The committee of management tends to be what the word says: they are a managing committee. They do not have their own financial resources in most cases. There are a few exceptions to that, but in most cases.

Mr HALL — Is there a process for consideration of those sorts of requests?

Mr HARRIS — If they put the proposition in, they will approach the minister in the same way that anyone approaches a normal minister. The minister will refer it to us and say, 'Can we do this?' or 'Is it a good idea?' or whatever the minister says, and then we will take it from there.

Mr DAVIS — And the assessment process will be triggered?

Mr HARRIS — Yes.

Ms PENNICUIK — Which would include community input?

Mr HARRIS — If it is a committee of management, it tends to be the community.

Ms PENNICUIK — I do not know if the community would think that the community is the same as the committee of management.

Mr HARRIS — That is a sort of a circular question, because it is then how many people would want to be on the committee of management.

Mr HALL — It may not be a committee of management; it may be a local pony club, for example, that is on Crown land and decides it would like to purchase it.

Mr HARRIS — Yes, so it is one community interest versus another community interest. Should this club have the advantage of being able to deal with this piece of land versus somebody else who says, 'No, I would like to walk across it'. A particular one is fencing. As I said, it comes up a lot. Committees of management just want to fence off their pieces of land, and other people do not want them to. We get tension over just that. As I said, that is what drives me to believe it is a lot more about the actual outcome than about the process. But I guess it depends on where you sit.

Ms PENNICUIK — So from what you are saying, there is in fact sale of public land?

Mr HARRIS — No, it is the sale of government land.

Ms PENNICUIK — If it is land that you are in charge of, DSE land — —

Mr HARRIS — I think the Department of Treasury and Finance went through this in a substantial amount of detail. To actually be sold, a piece of land has to move from being public land to being government land. It is as simple as that.

Ms PENNICUIK — You were just saying that plots of land that are public land could be identified and disposed of. That is what you just said.

Mr HARRIS — No, I did not. I just described a process which said somebody from the community or a committee of management will raise with the minister — —

Ms PENNICUIK — No, prior to that discussion you talked about some land that was disposed of just after you started that was DSE land, Crown land.

Mr HARRIS — Oh, 5 hectares. Yes, sorry, in the budget process.

Ms PENNICUIK — Yes.

Mr HARRIS — Yes, but that will have been — —

Ms PENNICUIK — What land was that?

Mr HARRIS — That will have been government land.

Ms PENNICUIK — Government land?

Mr HARRIS — It will have been. You asked me whether DSE was a land-holder. I was explaining how infinitesimally small our activity is in being a seller of land versus being a — —

Ms PENNICUIK — Infinitesimally small, but not never.

Mr HARRIS — But it is by definitionally government land.

Ms PENNICUIK — So can land be changed from public land to government land?

Mr HARRIS — If we have to get into this position that before every answer I give you the statement of the terms of reference, then if necessary I will do that.

Ms PENNICUIK — Mr Harris, can land change in status from public land to government land, and if so how does that happen?

Mr HARRIS — I think the Department of Treasury and Finance has provided you with a very clear-cut answer on that.

Ms PENNICUIK — Thank you.

Mr O'DONOHUE — Do commercial considerations ever come into the department's decision to object to a proposed land use on neighbouring or nearby private land?

Mr HARRIS — Sorry, could you say that again?

Mr O'DONOHUE — Do the department or the government's commercial considerations ever come into play in determining whether or not to object to or take an interest in a proposed development on private land that may be adjoining or nearby or that may impact on your controlled land?

Mr HARRIS — I think the answer to your question is no, but if I understand correctly it linked three things, so I will just be sure in answering that.

As the Department of Sustainability and Environment we would comment on a development primarily based around the regulatory issues that are our responsibility. I have used native vegetation as a good generic example but there are a number of others — flora and fauna protection, for example, that sort of thing. The department would not take the government's commercial objectives into account in dealing with that issue at all. We would represent that which legislatively we are required to represent. I do not just say that in some kind of flippant or offhand manner. That is what the government wants the department to do and it is what the department does, even to the extent of getting regularly very heavily criticised for doing it. We do not take the commercial interests of a party disposing of land, whether it is the government or a private party, as being a relevant consideration when we are considering our native vegetation requirements or our flora and fauna protection requirements or those sorts of issues where we would normally be commenting on a development.

Mr O'DONOHUE — You said 'disposal of land'. I was talking more about a development on private land where the land is not disposed of, where it is — —

The CHAIR — Adjacent to public land?

Mr O'DONOHUE — In the vicinity, where the department may determine there is — —

Mr HARRIS — It is hard to see what the commercial interest would be of the government in that case but if it is more like, 'Gee whiz, the government can get more land tax if this thing goes ahead' or more money, no, we would not take any account of that at all.

Mr O'DONOHUE — The sort of situation I am thinking of, and again I know you do not wish to make comment on specific examples — —

Mr HARRIS — I know we are trying to keep this at — —

Mr O'DONOHUE — That is why I tried to phrase the question in a generic fashion.

Mr HARRIS — I understand.

Mr O'DONOHUE — For example, at Apollo Bay it is proposed that Crown land or public land will be used to develop a 5-star resort. There is land in the main street of Apollo Bay that could also be used for a 5-star resort. If, hypothetically, the marketplace can only sustain one 5-star resort in Apollo Bay, and the 5-star resort proceeds on the Crown land, then a proposal comes up before the council for a 5-star resort on the appropriately zoned land in the main street of Apollo Bay, that will clearly adversely impact on the commercial interests of the government. Would the DSE take a position in that sort of situation?

Mr HARRIS — Being, of course, unable to answer your question in the specific but answering in the generic, it would be almost certainly a matter for other departments and not a matter for us. I think I can say that with a bit of experience in recent history. The planning people and industry/tourism development people take a great deal of interest in that, DSE is not interested in that.

The CHAIR — Can I return to the issue of sale of public land and give you a couple of options here? The first point is: does the department have a list of public land that has been sold or alienated in the recent past? The second question I am going to ask in terms of your definition, or more correctly the Attorney-General's narrow definition of land, is: does the department have a list of government land that it has sold or disposed of in recent years?

Mr HARRIS — I think it is probably better if I take both those questions on notice and seek a view from the minister.

The CHAIR — You must know, as secretary, whether the one on government land exists. Within his definition and the definition that you seek to limit yourself to, is there such a list in the department?

Mr HARRIS — My answer would be as follows: in the terms of reference, the way they are framed, I do not think I can advise you on government land, but I would like to — —

The CHAIR — We have been told by the Attorney-General that government bureaucrats and others will only answer in terms of government land.

Mr HARRIS — That is correct, and then when I look at the terms of reference as they stand, I see no reference to government land. That is my problem — inherently it is contradictory.

The CHAIR — I am giving you the option of answering under either scenario: the committee's adopted understanding of public land or the definition of public land that the Attorney-General sought to impose.

Mr THORNLEY — The point the witness is making is that the definition of government land is separate from public land.

The CHAIR — It is a matter for the witness himself.

Mr HARRIS — I think I can and will say that under the terms of reference as they stand: I cannot fit providing you with information on government land in terms of a list under those terms of reference. I cannot fit it. I can either tell you that I am unable to provide you with — —

The CHAIR — Despite the Attorney-General writing to you and to the committee saying that his definition of public land equalled government land, and he defined it in terms of an administrative order in 1988, you are telling me now that you cannot even answer?

Mr HARRIS — No. Let me explain once again what I believe the Attorney-General was saying.

The CHAIR — We understand what he was saying; we have read his material closely.

Mr HARRIS — I believe the Attorney-General was saying that sale or alienation can only occur with government land. Therefore, definitionally, whilst the committee is inquiring into sale or alienation of public land, there is no such subset. Therefore, there is no such list. You have asked me, though, for a list which is not covered by your terms of reference — —

The CHAIR — For the purposes of the question, I have accepted the Attorney-General's narrow definition of public land.

Mr HARRIS — And I can tell you that the information exists but I cannot provide it to you under your terms of reference.

The CHAIR — So you are withholding it again, more information that is going to be withheld from a parliamentary committee — information that you admit exists?

Mr HARRIS — Information exists because clearly we, the department, would know what land, being government land, we disposed of. We would know that. Therefore I could provide you with that information, but I cannot provide it to you under your terms of reference.

The CHAIR — You could. You simply could accept that the information is of public relevance to this committee. I place on record my view that semantic word games are being played here. This is a direct attempt to frustrate the committee. It is obfuscation of the worse type, and I am disappointed.

Mr TEE — Or the committee could seek the Parliament's assistance, in which the case the witness has indicated — and I am sure will indicate again — that he would be happy to cooperate with the committee.

The CHAIR — The committee has already understood, Mr Tee. We indicated our terms of reference are such and have indicated a definition that we have adopted. The Attorney-General has sought to oppose that, and I have sought information within the scope of the Attorney-General's view. Do you have further questions, Mr Thornley?

Mr THORNLEY — I would like to clarify that just to make sure I understand this once and for all since Mr Davis does not seem to. As I understand your response, the Attorney-General's advice had been that there is public land and there is government land. Only government land is able to be sold or alienated, therefore inquiries about the sale or alienation of public land would result in a null set, and that this committee's terms of reference is solely about the sale or alienation of public land which is a null set. If this committee had a term of reference that was about the sale or alienation of government land, you would be in a position to answer its questions? I believe you have indicated previously that if the Parliament were to alter the committee's terms of reference to enable that to occur, you would willingly provide that information?

Mr HARRIS — Without trying to advise the Parliament what to do, yes.

The CHAIR — I have a further question, and it follows Ms Pennicuik's question earlier on about the set of Crown land and the ability to alienate that land or to move that into the subset of government land. I am wondering if you could outline exactly how that process would occur.

Mr HARRIS — I think we have actually spent a large amount of time on that process, but in simple substance: there will be a proposition put up by a portfolio to change the status of land and that will go to the Department of Treasury and Finance; the Department of Treasury and Finance may ask us to undertake a land assessment process; if they ask us to undertake that, we will undertake it; we will provide them with a result; from then on it is a matter for another minister or portfolio; if they decide to proceed, we may become involved, as Ms Douglass has said, a little later in relation to relieving any reservations that may arise there legislatively or otherwise; we may be involved in valuations, we may be involved in surveying — these are the sort of functions that the department has.

The CHAIR — Is there a list of land that you have made reference to or examination of that has moved into the class of being government land?

Mr HARRIS — I think my answer is going to be exactly the same, Chair.

The CHAIR — I am asking you the question simply.

Mr HARRIS — I do not believe under your terms of reference I can provide you with that information.

The CHAIR — I am disappointed again.

Ms PENNICUIK — Can I just clarify something, Mr Harris? Can other departments identify land that is public land, not government land, and earmark that for or make a recommendation that that should be transferred to become government land and then sold?

Mr HARRIS — I think the best and clearest example is the holding by a department of freehold land. That occurs as a process, and I think the Department of Treasury and Finance referred to that as well. Primarily I think that is what they will hold. But it is possible, is that right, that other departments could hold some public land?

Ms DOUGLASS — Land may be reserved, say, for court purposes, police stations, hospitals.

Mr HARRIS — Where there are reservations involved.

Ms PENNICUIK — Okay, and then that just triggers the same assessment process that we have already talked about?

Mr HARRIS — Yes.

Ms PENNICUIK — Thank you.

Mr HARRIS — The assessment process should occur regardless of the starting point of the land.

Ms PENNICUIK — Those assessment and valuation reports, are they publicly available?

Ms DOUGLASS — We have never provided them to the public as such.

Ms PENNICUIK — Is there a reason why? Is there a law or a regulation to say that they should not be or is it just that you have not?

Ms DOUGLASS — Not that I am aware of.

Ms PENNICUIK — So they could be publicly available?

Ms DOUGLASS — Yes.

Mr HARRIS — They could be sought under freedom of information legislation, for sure.

The CHAIR — A final question?

Mr O'DONOHUE — Mr Harris, Mr Hall asked you previously about rental derived from Crown land through licences or leasing, and you took that on notice. Do you have targets for income you must achieve or aim to achieve?

Mr HARRIS — No. I think it is the other way around. We are the adviser on what the value of the land is and therefore all other circumstances notwithstanding what the appropriate lease value of the land might be. It is consistent with my answer quite a lot earlier where I was saying that we are a part of the chain, so this would be to ask the VG what the value of the land is for the purpose of determining a lease assessment — that would be right.

The CHAIR — Thank you. We are at least pleased that you attended today, and that is the first time that we have had DSE witnesses. It took some time to get to that point, but we are pleased that you are here. I put on notice that we may need to talk to the department both in hearing and also informally as the committee's inquiry proceeds.

Mr HARRIS — The department will be happy to appear again as required by the committee.

Witnesses withdrew.