

CORRECTED VERSION

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Melbourne — 29 October 2007

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Witnesses

Ms T. Hart, director of land and property group, commercial division, and

Mr I. Gibson, solicitor to treasury and finance, Department of Treasury and Finance.

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 our terms of reference to inquire into the sale or alienation of public land for development, the sale or alienation of public open space for the purposes of private development, and the sale and development of public land, and the relationship to the Melbourne 2030 policy and green wedges. I welcome Trudy Hart and Ian Gibson from the Department of Treasury and Finance.

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 standing orders. Any comments you make outside the hearing may not be afforded such privilege. Witnesses will be provided with proof versions of the transcript in the next couple of days. You are well aware, I know, of our terms of reference. I ask you in the first instance whether you want to make any opening comment, and then we will ask some questions.

Ms HART — Thank you. I have prepared a written statement, or a statement that I would like to speak to today. If the committee is comfortable, I will read through that. I am the director of the land and property group, commercial division, Department of Treasury and Finance, level 5, 1 Treasury Place, Melbourne. I commenced in that position in October 2006. I attend before the select committee in my capacity as a member of the Victorian Public Service. I am an employee of the Crown and appear as a representative of the Minister for Finance, WorkCover and the Transport Accident Commission at the nomination of the Secretary of the Department of Treasury and Finance. The secretary has nominated me to give evidence on government policy related to the sale and alienation of public land.

Ian Gibson is the solicitor to the Department of Treasury and Finance. Mr Gibson also attends before the select committee in his capacity as a member of the Victorian Public Service. He is an employee of the Crown and appears as a representative of the Minister for Finance, WorkCover and the Transport Accident Commission at the nomination of the Secretary of the Department of Treasury and Finance. The secretary has nominated Mr Gibson to give evidence about legal issues which relate to the sale and alienation of public land.

I have been provided with a copy of the guidelines for appearing before state parliamentary committees, as issued by the Department of Premier and Cabinet in October 2002; the Victorian Public Service code of conduct; and the Legislative Council select committees and legislative committees guidelines for the protection of witnesses. I am informed by Mr Gibson that he has been provided with the same documents.

I have also been provided with copies of the following letters: a letter from the Attorney-General to the Secretary to the Department of Treasury and Finance dated 18 October 2007, which attached a letter from the Attorney-General to the select committee dated 26 September 2007, and a reply from the select committee to the Attorney-General dated 10 October 2007; a letter from the Secretary of the Department of Treasury and Finance to the select committee dated 19 October 2007; and an exchange of letters between the select committee and the Secretary of the Department of Treasury and Finance of 22 October 2007, 24 October 2007 and 26 October 2007. I am informed by Mr Gibson that he has also been provided with copies of those letters.

The letter of the Attorney-General dated 18 October 2007 notes that any witness will appear as a representative of the relevant minister and asks that the secretary ensure that witnesses from his Department are aware of the view taken by the executive government on the scope of the terms of reference. The letter of the secretary dated 19 October 2007 refers to the letter from the Attorney-General and says that, in light of that letter, he will instruct witnesses to ensure that the evidence provided to the committee is consistent with the government's position on the scope of the terms of reference. I have received such an instruction.

In the context in which I give my evidence, and in which Mr Gibson gives his evidence, 'Crown land' includes both public land and government land. I understand that the distinction between public land and government land is found in an agreement made in 1988 between the then Minister for Conservation, Forests and Lands and the then Minister for Property and Services. It gave effect to an order — the 1988 administrative arrangements order — which gave responsibility for the sale and alienation of Crown land under the Land Act 1958 to the Minister for Property and Services.

Under an agreement between the two relevant ministers, as required by the Premier, the 1988 administrative arrangements order provides that 'public land' is land with public importance which cannot be sold and 'government land' is land which can be sold. My role encompasses the sale and alienation of land which has been categorised as 'government land'.

As previously stated, both public land and government land are Crown land. In order to understand the government's policy regarding the sale and alienation of public land, it is beneficial to put it in the context of how Crown land as a whole is dealt with. In giving my evidence today I am aiming to assist the committee to consider its terms of reference in the proper legislative and policy context. In so doing I am, of course, unable to give evidence about matters which relate to specific or individual sites. Mr Gibson gives his evidence subject to the same parameters.

The CHAIR — Why is that?

Mr TEE — You did not ask for it.

The CHAIR — Specific sites.

Mr TEE — You did not ask for it in your correspondence.

Ms HART — The Secretary was invited to identify a witness or witnesses who could talk about the policy around sale.

The CHAIR — Yes, sure, sure, but you could necessarily answer about specific parcels as well.

Ms HART — I have been asked to prepare on the basis that you wanted to talk about the policy.

The CHAIR — Sure, but you are knowledgeable in that area.

Mr TEE — The committee has asked the witnesses to give evidence in relation to their submission.

The CHAIR — I accept what you are saying.

Mr TEE — The minister in his letter has said that witnesses will need notice consistent with the guidelines for witnesses before individual places are dealt with.

The CHAIR — I understand your point, but our witness is also knowledgeable — —

Mr TEE — I also understand your point.

The CHAIR — My point is our witness is also knowledgeable on other matters.

Mr TEE — Well, that may be the case, but that is not relevant to the evidence that they are providing today, which, consistent with the guidelines for the protection of witnesses, are matters on which they have received notice about.

Ms HART — The land and property group, which is the area that I head up: the minister for finance has the power to undertake dealings in respect of land. The minister for finance has the power to undertake dealings in respect of land. The minister has authorised and conferred to me administrative powers relating to the sale, acquisition, lease and licence of land pursuant to: the sale and leasing of Crown land under the Land Act 1958; the sale of land held in freehold title under the Sale of Land Act 1962; the acquisition, leasing and licensing of land and premises under the Financial Management Act 1994.

One of the major activities of the land and property group relates to the disposal of surplus Crown land under the Land Act 1958. The group also sells surplus freehold land from its portfolio and acts, in a small number of cases, as an agent for disposing of other government agencies' surplus properties.

I am responsible for: briefing the Minister for Finance, WorkCover and the Transport Accident Commission in respect of proposed sales; seeking the Minister for Finance, WorkCover and the Transport Accident Commission's approval to sell specific properties; executing contracts regarding the disposal of land; executing contracts for major works — for example, to deal with environmental issues at particular sites proposed for future sale; recommending to the Minister for Finance, WorkCover and the Transport Accident Commission, who in turn makes a recommendation to the Governor in Council, that Crown grants be issued in respect of transactions that have been finalised.

Land and related property assets represent a key state resource. To ensure that this valuable resource is used efficiently, government needs thoroughly researched and carefully considered advice. As well as managing the sale of surplus Crown land, the land and property group facilitates transfers of Crown land and property to meet whole-of-government service needs. The group acquires land on behalf of departments and agencies to meet infrastructure programs. It also optimises the value of government land and property and provides advice and assistance to government, departments and agencies in relation to property matters including land issues associated with major government projects.

The specific responsibilities of the land and property group include selling surplus Crown land and freehold land on behalf of other government agencies; arranging valuations of land and ensuring all required due diligence is completed prior to sale; enhancing the value of surplus properties before disposal by facilitating planning scheme amendments to rezone land prior to sale; identifying and purchasing suitable properties for other government agencies by negotiation or compulsory acquisition when necessary; assisting agencies with strategic property asset planning project management and land transfers, including the provision of high-level planning advice on all planning schemes and zoning issues; undertaking environmental assessments of Crown and freehold land; implementing remediation strategies for contaminated sites, including engagement of consultants and contractors; creating and issuing Crown grants — land titles — for land sold by the land and property group and other government agencies; managing surplus land and property held by the Department of Treasury and Finance, including short, medium and long-term leasing.

On the whole-of-government context, before I go into specific details on the sale of Crown land I would like to provide the committee with a sense of the extent and complexity of the government's land-holdings across Victoria. Approximately one-third of land in Victoria is Crown land. Uses of Crown land include parks, forests, ports, aerodromes, railways, camping grounds, foreshores, schools, hospitals, prisons, sporting amenities, cemeteries and public halls. In addition a number of ministers of the Crown hold land in freehold title. Examples of such land include public housing, schools and hospitals. If Crown land and freehold land-holdings are aggregated, the total value of land and national parks held by the state of Victoria exceeds \$30 billion.

The following paragraphs of my statement set out the framework, policy and processes for the sale and alienation of surplus Crown land.

The conceptual framework for Crown land held by government: as outlined in the department's submission of September 2007, all Crown land is considered to be public land until it has undergone an assessment process. When a department or agency has identified land as surplus to its requirements the Department of Sustainability and Environment will generally, upon request, undertake an assessment. The purpose of this assessment is to determine whether the land has any residual biodiversity, cultural or community-use values and whether retention of the land in public ownership is necessary to protect these values. Land that has no public land values is assessed as government land, and the Minister for Finance, WorkCover and the Transport Accident Commission will consider future use options, including sale. In some circumstances the land is assessed as government land with a condition that identifies public land values to be protected. This can be achieved through the contract of sale requiring the parties to enter into a section 173 agreement via the Planning and Environment Act 1987 or section 69 of the Conservation, Forests and Lands Act 1987 in respect to flora and fauna values.

Sale of Crown land: pursuant to the Administration of Acts — General Order signed by the Premier on 8 August 2007, the Minister for Finance, WorkCover and the Transport Accident Commission is responsible for all provisions of the Land Act 1958 relevant to the sale and alienation of Crown land. It should be noted that the Minister for Finance, WorkCover and the Transport Accident Commission is the only minister authorised to sell Crown land.

Five sections of the Land Act 1958 are commonly relied upon by the Minister for Finance, WorkCover and the Transport Accident Commission for the sale of Crown land. Section 89 provides the power for sale by public auction or by public tender at such reserve price and on such terms and conditions as the Minister for Finance, WorkCover and the Transport Accident Commission thinks fit.

Section 99 provides the power, with the approval of the Governor in Council, for sale to a public authority at a price and on terms and conditions which the Minister for Finance, WorkCover and the Transport Accident Commission thinks fit if the Minister for Finance, WorkCover and the Transport Accident Commission is satisfied that the public authority requires the land for a public purpose. For the purpose of section 99, a public authority has

the meaning defined under the Conservation, Forests and Lands Act 1987 and includes a municipal council or a body corporate created for a public purpose by or under an act.

Section 99A provides the power, with the approval of the Governor in Council, by order published in the *Government Gazette*, for sale by private treaty at a price not less than the valuer-general's valuation and on any other terms and conditions that the Minister for Finance, WorkCover and the Transport Accident Commission thinks fit.

Section 151AA provides the power to sell land to the person who was the lessee of that land at a purchase price and upon terms and conditions determined by the Minister for Finance, WorkCover and the Transport Accident Commission.

Section 209(2) provides the power to sell Crown land not exceeding 13 hectares to the owner of the adjacent freehold land at a price and on terms and conditions which the Minister for Finance, WorkCover and the Transport Accident Commission thinks fit.

The government's asset management policy: the government's asset management policy is outlined in the government asset management policy statement entitled *Sustaining Our Assets*. An element of this policy is the government's asset management framework, which, among other things, provides for the ongoing decision-making process of establishing whether an asset or property is required.

The asset management framework is designed to: allow government to increasingly exercise greater strategic control over the asset base and improve decision making by better informing government on the link between asset investment decisions, outcomes and output delivery; shift the annual process focus to the medium to longer term and better consider whole-of-asset-life considerations; provide a clearer link between funding sources and the types of investment to which they are applied; better support sector-wide strategic investment and management; clarify explicit asset management responsibilities; increase the level of confidence in the funds available to departments to sustain existing capacity; improve evaluated and reported information available for investment, purchasing and management decisions; clarify incentives and increase revenue flexibility available for departments to effectively and efficiently manage asset holdings.

A key feature of the asset management framework is to highlight service directions over the medium and long term to inform and drive short-term management and investment decisions. The asset management framework requires each department to demonstrate and outline how a departmental asset base can be best aligned with service delivery needs to optimise its support of output service delivery. The data informs and advises government in its asset decision-making deliberations and is integral to the budget process. Furthermore, the taking of life cycle and portfolio approaches to asset management under the framework allows each department to evaluate: operating and maintenance requirements; implications of eventual replacement of assets; the contribution of each controlled asset in the context of all asset holdings.

The diagram on page 11 of my notes was extracted from *Sustaining Our Assets*. It is headed 'The asset life cycle'.

To support the asset management framework, guidance documents in the form of the asset management series present the principles, policies and practices and continue to provide guidance on a comprehensive and integrated approach to infrastructure and asset management in Victoria. First launched in November 1995, the asset management series more specifically describes the purpose and fundamental principles of effective asset management and presents a strategic framework through which all departments, service agencies and statutory authorities in the Victorian public sector can achieve its benefits. The asset management series is intended for application to physical assets with a potential service life of more than one year which include land, buildings and infrastructure. The asset management series further espouses that service delivery needs will ultimately guide asset practices and decisions.

In the context of surplus land, government departments have a policy imperative and obligation to provide consideration to suitable disposal options for surplus land as outlined in the asset life cycle such as retirement, replacement, renewal or redeployment. This may include the possible transfer of the subject property to another government department or agency as prescribed by section 4.3(1) of the policy and instructions on the purchase, compulsory acquisition and sale of land where 'first right of refusal to purchase land no longer required by an agency must be offered to another agency which identifies the land as being required for its purposes'.

Government policy relating to the sale of land — overarching policy: all government land transactions, whether relating to Crown land or freehold land, are subject to compliance with government policy. This policy is enunciated in the government's policy and instructions for the purchase, compulsory acquisition and sale of land, August 2000, administered by the government land monitor. This is a policy that all government agencies and authorities must use in employing a consistent best practice approach to their property transactions. It was included as appendix 4 of the department's written submission to the select committee.

The following comments relate to the role of the government land monitor and the formal policies which have been established in dealing with government land sales.

Role of government land monitor: the role of the government land monitor, as previously advised in the department's submission to the select committee, is:

to provide government with an assurance of accountability and integrity in land transactions. It must ensure that transactions are legal, are in the public interest and provide best results for the government. To achieve this outcome, agencies are required to obtain government land monitor approval to conduct transactions.

The government land monitor has a fundamental role in assisting government to achieve appropriate, accountable and transparent transactions in the sale, purchase and compulsory acquisition of land.

The government land monitor was established in 1978 to oversee all government agencies' land transactions. Generally, all land transactions above \$250 000 are required to be approved by the government land monitor. In addition, where land is proposed to be sold by private treaty, irrespective of value, the sale requires the approval of the Minister for Planning, being the minister responsible for the government land monitor. Approval of the Minister for Planning to private treaty sales does not apply to private treaty Crown land sales approved by the Minister for Finance, WorkCover and the Transport Accident Commission under relevant sections of the Land Act 1958 that I outlined earlier.

Unless special arrangements have been made with the government land monitor, there must be no unconditional commitment or agreement, including 'without prejudice' offers, before approval for a transaction is obtained from the government land monitor. When approval has been denied or withheld by the government land monitor, representatives of the agency may confer with the director of the government land monitor. If the matter remains unresolved, it will be determined by the Minister for Planning after taking all of the circumstances of the transaction into consideration. The Minister for Planning may confer with the minister responsible for the agency.

Following consultation with the government land monitor, the Minister for Planning may approve transactions that do not accord with this policy provided circumstances are established that justify such approval.

Government land monitor review process: the government land monitor is responsible for applying the principles of the policy document I mentioned earlier to all land transactions submitted to it for approval. The government land monitor will consider a number of matters related to the land transaction before approving the proposed transaction, including —

The CHAIR — Do you have a copy of that document?

Ms HART — Yes, I do.

The CHAIR — Thank you. Could you make it available?

Ms HART — the appropriate zoning of the land is in place; valuation advice has been obtained and reflects the terms of sale; all required legislative approvals have been obtained; adequate due diligence has been undertaken to inform the valuation process including assessment of any contamination issues; disclosure of all relevant information is provided to the market; native title issues have been addressed; any advertising campaign is conducted in a manner that adequately exposes the land to the market.

Valuations of land: the primary function of the Victorian valuer-general is to provide protection to the probity of government by ensuring that valuations are properly made and based on defensible valuation methodologies when used in government property transactions and by rating authorities.

Valuations are required for the sale, purchase or compulsory acquisition of land in accordance with the following policy. Less than \$250 000: it is mandatory to obtain one valuation made by the valuer-general or a valuer who is a member of the whole-of-government panel of valuers. With \$250 000 to \$500 000, it is mandatory to obtain a valuation from the valuer-general. Agencies may use discretion with respect to a second valuation and if obtained the second valuation must be made by a valuer who is a member of the valuer-general's panel of valuers. With \$500 000 and above, it is mandatory to obtain two valuations, one of which must be obtained from the valuer-general. The second valuation must be made by a valuer who is a member of the valuer-general's panel of valuers.

A second valuation is not mandatory where the transaction involves another state government agency or a municipal council. Land must not be purchased for an amount above the valuer-general's current market valuation or sold at an amount which is less than the valuer-general's current market valuation unless authorised by the valuer-general and approved by the government land monitor. It should be noted that both the government land monitor and the valuer-general adopt independent roles in respect of all government land transactions.

On the sale of land by public process, all land must be sold by public auction or tender or by other public process unless: exceptional circumstances have been established and approved by the Minister for Planning; relevant provisions of the Land Act 1958 apply; otherwise provided for in the government policy; written approval for sale by some other method is granted by the government land monitor.

Before land is sold by a public process, other government agencies and statutory authorities, as defined in the policy and instructions for the purchase, compulsory acquisition and sale of land, are to be provided with a first right of refusal to purchase the land at not less than the market value assessed by the valuer-general.

The mechanism to enable other government agencies to purchase surplus land is either through direct contact or via the sales bulletin board, a web-based database of surplus land which can be accessed by government agencies and statutory authorities. The sales bulletin board is administered by the government land monitor. It is the responsibility of the selling agency or authority to list their surplus properties on the sales bulletin board.

If no other government agency expresses an interest in purchasing surplus land, it may be offered for sale to the council, where the council requires land for a public purpose. Land may also be sold to the commonwealth. These sales are transacted at not less than the market value assessed by the valuer-general.

Contaminated land: the government land monitor policy provides guidance to government agencies dealing with contaminated land. Agencies must be aware of the possibility that land to be sold or acquired may be contaminated and the existence of contamination can significantly impact the market value of the land.

In order to adequately address this matter, agencies should obtain sufficient documentation from the Environment Protection Authority, including Environment Protection Authority guidelines and bulletins on contaminated land and minister's direction no. 1 on potentially contaminated land, first introduced in 1989. Direction no. 1 deals with proposals introducing a sensitive use — defined as residential use, a child-care centre, a preschool centre or a primary school — or for agriculture or public open space purposes on potentially contaminated land and the requirements planning authorities must follow.

If an agency is selling land that is contaminated, it needs to decide whether to clean up the site or sell it in its contaminated condition. The environmental state of the property must be included in the instructions to the valuer.

The sale process undertaken by government: the sale of surplus land is managed within the established legislative and government policy framework providing a standard process. The sale of Crown land is governed by the provisions of the Land Act 1958 and the sale of freehold land is subject to the Sale of Land Act 1962 and any legislation which governs the operation of the agency. I outlined the public-government land assessment process earlier in my statement. Where Crown land held by a government agency or statutory body is no longer required for an operational use, the Department of Sustainability and Environment will generally, upon request, assess whether the land has any public land values.

In addition, where Crown land is temporarily or permanently reserved under the Crown Land (Reserves) Act 1978 or a prior act of Parliament, such reservation must be revoked before the land can be offered for sale. The revocation of a temporary reservation must comply with the process described by section 10 of that act. Firstly, a notification is published in the *Government Gazette* giving at least 14 days notice of the intention to remove the

reservation. This provides the opportunity for public input into the process. Secondly, the Governor in Council is required to make an order removing the reservation which also must be published in the *Government Gazette*. In the case of permanent reserves, legislation in the form of a lands bill is required. In projects of state significance, land management issues can be addressed through specific legislation or through an endorsement of cabinet.

If Crown land is assessed as not having public land values which need to be managed in public ownership and all reservations are revoked, the procedure for the disposal of Crown land is progressed in accordance with the relevant legislative framework and in compliance with the government policy and instructions for the purchase, compulsory acquisition and sale of land. This land is referred to as government land. Land with public land values is managed by the relevant department or authority which has responsibility for the function to which the land is applied. This land is called public land.

Preparation of land for sale: departments historically have held land in a mix of freehold land and Crown land. Properties held as Crown land may be reserved. Reserved Crown land is usually reserved for a particular purpose — for example, police purposes, courthouse, hospital. A list of such purposes is contained in the Crown Land (Reserves) Act 1978, part 4.

Where a decision has been made to sell a surplus property, ministerial approval and delegation for administration of sale is required before a government agency can proceed with a sale. The sale of surplus land is generally conducted through a public process — for example, auction or public tender or by private treaty.

As part of preparing both Crown land and freehold land for sale, disclosure of relevant property information is provided to assist potential purchasers with the decision-making process, while also protecting both the government and public interest. Disclosure of relevant information varies on a case-by-case basis, and may include, but not be limited to: planning, heritage, land contamination, hazardous materials — for example, asbestos — geotechnical, building conditions, site services and survey. Wherever possible, public use zones or land reserved for public purposes — public park and recreation zone and public conservation and resource zone — should be appropriately rezoned prior to sale to provide certainty to the market. The local council and members of the public participate in this process.

In the case of a public sale, an accredited real estate agent is retained through a competitive tender process and a marketing schedule developed to best present the property to the market, allowing adequate time for prospective purchasers to make inquiries and also to meet legislative requirements — for example, notice of Crown land sales needs to be published in the *Victoria Government Gazette* at least 14 days before the auction or close of tender date. On settlement, freehold ownership is transferred to the purchaser. In the case of Crown land, a Crown grant will be issued to the purchaser.

Treatment of the proceeds of sale: the proceeds of the sale of all Crown land and all freehold land must, by virtue of section 9 of the Financial Management Act 1994, be paid into the Consolidated Fund. Section 29 of the Financial Management Act 1994 permits proceeds received from the disposal of assets to be appropriated to the department disposing of the assets, on conditions agreed between the Treasurer and the minister responsible for administration of the assets. Such revenue retention arrangements must be detailed in a schedule to an appropriation act.

The Crown grant process: Crown land by its nature is not held in title but may have the status of being permanently reserved Crown land; temporarily reserved Crown land; unalienated Crown land — no reserves; vested Crown land.

As I have already outlined, prior to the sale of Crown land, any reservations must be removed in accordance with legislative requirements. At the completion of a sale and following payment of all moneys owing, a Crown grant is issued to the purchaser. A Crown grant is the term used to describe the first issue of a title for the land. The Crown grant is delivered to the registrar of titles for registration.

Requests for the issue of a Crown grant come for a variety of reasons such as: part of the sale process for the sale of surplus Crown land by the Minister for Finance, WorkCover and the Transport Accident Commission; lessees of land held under various acts, including the Closer Settlement Act 1938 and the Rural Finance Act 1988, who have paid their final instalment, are entitled to a Crown grant under those lease arrangements; by ministers of the state who have power under legislation they administer to request a Crown grant for projects of state significance.

In all of these circumstances a Crown grant is prepared by the Department of Treasury and Finance. The Minister for Finance, WorkCover and the Transport Accident Commission makes a recommendation to the Governor in Council to grant the land under the provisions of the Land Act 1958, or other specific acts containing granting provisions. The grant is then forwarded to the land registry where it is registered and a title is issued with volume and folio numbers.

Mr Gibson and I now welcome questions from the committee.

The CHAIR — Thank you for your evidence. I make the point that it is a very narrow period of evidence that is provided here and the committee will want to follow up a number of, I am sure, details of things with either you, or the secretary, or others, over the next period; so I put that on record. You or the secretary or others in the department can expect to be back here again to deal with specific land issues and other points.

You indicate also that you are aware of the whole-of-government submission.

Ms HART — That is correct.

The CHAIR — I want to talk to you about the status of that submission. You indicate also in your evidence today that you have been provided with a copy of the guidelines for appearing before state parliamentary committees, as issued by the Department of Premier and Cabinet. I have a copy of those guidelines. Am I correct in presuming that the whole-of-government submission has been prepared entirely in accordance with those guidelines?

Ms HART — I have not looked through the guidelines with the submission in front of me and done that check.

The CHAIR — That is a copy.

Ms HART — Would you like me to?

The CHAIR — I am trying to understand the status of both your submission today and the submission provided by the department.

Ms HART — I think I understand what you are asking. Certainly the Department of Treasury and Finance's submission and my statement today are intended to provide background information to the committee, and in providing that background we are recognising that if we only spoke about the government's interpretation of what the terms of reference are, it would be a very narrow amount of information.

Mr TEE — I am not sure what your question is?

The CHAIR — I am just trying to understand the status of these; whether they have been prepared in accordance with the guidelines for government submissions. You are not sure?

Ms HART — I would need to check that, and I have not done that checking.

The CHAIR — I want to establish the veracity of the submissions in the first instance. I want to understand the impact of these guidelines on the material that has been presented to the committee.

Ms HART — What I would like the committee's agreement for me to do, is consult with counsel just to make sure that in responding, it is appropriate for me to respond.

The CHAIR — Can I just say, you under oath here.

Ms HART — I understand that.

The CHAIR — In the sense that you are under the Parliamentary Committees Act, your obligation is to answer the committee within its terms of reference, truthfully and honestly, and to provide the information that is required by the committee. The simple question is: can you tell us whether these submissions — the government submission and your material today — has been prepared in accordance with the guidelines for submissions and responses to inquiries by the Department of Premier and Cabinet?

Ms HART — Yes.

Mr TEE — And is there a suggestion that they have not been prepared? I am not sure?

The CHAIR — I am just trying to establish whether it is or not; whether they have or not. I do not know, I am seeking evidence.

Ms HART — Yes, they have been.

The CHAIR — They have been?

Ms HART — They have been.

The CHAIR — Okay. Was any material omitted from the submission that you are aware of?

Ms HART — No.

The CHAIR — No material was omitted. Was there an earlier draft, a larger submission than the one the government presented to the committee?

Ms HART — I think there would have been many drafts, as there always are of any document that gets developed.

The CHAIR — Was there a longer submission, though, that was a fairly well-established submission, that was reduced in size and scope?

Ms HART — There were a number of drafts of that submission.

The CHAIR — Was there a major length, longer submission prepared, which was later shortened pursuant to the — —

Ms HART — I think I have answered that there were a number of drafts of that document.

The CHAIR — I am asking: was there a longer submission?

Ms HART — There may have been a longer, there may have been a shorter, version at different points in time.

The CHAIR — So you are answering that there was a longer one or there was not a longer one?

Ms HART — I am saying that there may have been a longer version; there may have been a shorter version.

The CHAIR — It is a very simple question. You have been intimately involved in this process, as I understand.

Ms HART — Yes.

The CHAIR — My understanding, my information, is that there was a longer, more detailed submission that was prepared and was due to come to this committee, and pursuant to these guidelines was culled. Is that a fair rendition of what occurred? Just answer yes or no.

Mr TEE — Has the witness not answered the question? There have been a number of drafts.

The CHAIR — No, in my view she has not. I would like her to actually be quite clear about what occurred here. There was a longer submission. It was reduced by the processes outlined — if you look at the back of that, there is a flowchart.

Mr TEE — There is nothing untoward about a number of drafts — —

The CHAIR — My information is that there was a major draft that was shortened, and much less information was provided to the committee. I am simply asking you a very simple question, given your intimate involvement in the preparation of these documents: was there a longer draft that was shortened?

Ms HART — I have answered your question that there were various versions of this document. Some may have been longer, some may have been shorter, at different points in time.

The CHAIR — Would you provide copies of those drafts for the committee?

Mr TEE — That is not appropriate. The government — —

Ms HART — We ended up with a final draft. We did not end up with a number of versions.

The CHAIR — I am sorry; I am very interested to see the material that has been excluded from these submissions, because I think it is pursuant and significant for our terms of reference. I am asking you a very simple question: will you provide that additional material to the committee?

Ms HART — This is the government's submission.

The CHAIR — Just yes or no.

Ms HART — As I said, there would have been drafts in developing this, but this is where we landed. I do not have on my computer at the office another version.

The CHAIR — I understand that there was a longer submission that was prepared. Unfortunately, the government took the view that the committee would not be provided with all the information that it should have.

Mr TEE — Is that not — —

The CHAIR — No, this is quite important. My other question to you is about the request by the committee for detailed information about the sale of land — the printout, as it were, of all the government land sales since 1 January 2002. We have not had a clear response from the department as to what is happening with that document. What I am asking you today is to provide that list of all government sales on the Treasury and Finance system since 2002.

Mr TEE — Hang on a minute; the government has a view about those documents being outside the committee's terms of reference. The committee has written to the government seeking the government to confirm or otherwise its position. Until that issue is resolved, it is between the committee and the government. I thought that was the status of the production of those documents, subject to discussions between the committee and the government. It is inappropriate for the department to be asked to provide — —

The CHAIR — With respect, Mr Tee, it is not inappropriate for the committee to seek those documents. I am asking Ms Hart today whether she will provide those documents. It is just a simple question. She is entitled to respond as she sees fit.

Ms HART — Any documents that would be provided by me or by my department would need to be cleared by the secretary. We would need to make sure that providing those documents was in accordance with the committee's terms of reference.

Mr TEE — And there is a dispute between the committee — —

The CHAIR — It is within the committee's terms of reference on public land. I am asking you today: will you provide those documents?

Ms HART — The department will provide documents that are assessed as falling within the committee's terms of reference.

The CHAIR — When can we expect those documents from the committee?

Mr TEE — Hang on a minute. Again, the committee — —

The CHAIR — This is a very important point.

Mr TEE — The committee has made a clear decision about how we are going to approach this issue. The committee decided to approach the Attorney-General again. Now you are asking to circumvent the committee's process in terms of how we are dealing with that dispute.

The CHAIR — Incorrect.

Mr TEE — Yes, you are. This is outside the approach that the committee has agreed to.

The CHAIR — We are quite within our rights to seek documents from witnesses.

Mr TEE — We are, but the committee has agreed to a different approach.

The CHAIR — No, it has not.

Mr TEE — Yes, it has.

The CHAIR — It has agreed on one approach to the Attorney-General.

Mr TEE — That is right. And now you, as the Chair, are acting unilaterally.

The CHAIR — As a committee member, I have sought to seek a document from a witness.

Mr TEE — You are not doing this on behalf of the committee.

The CHAIR — I am doing this as a committee member — to seek a document of significance to the committee and its terms of reference. I would again ask the witness whether she will provide those documents.

Ms HART — I think I might refer the question to Ian.

The CHAIR — It is you who are under question here.

Ms HART — I understand that.

The CHAIR — So what is his status here?

Mr GIBSON — I am a witness.

The CHAIR — A witness in respect of what information?

Mr GIBSON — I wanted, Chair, to go to the particular request that was made to the Secretary of the department, to which you are referring. On that, there is some specific information which may assist you in regard to the question you are asking. The letter states that it is the committee's understanding that the Department of Treasury and Finance maintains a list of all the sales and/or transfers of public land by government departments. That understanding must have been based on misinformation. There is no such list.

The CHAIR — You do not maintain a register of land that is sold?

Ms HART — We do, but not of public land.

Mr GIBSON — Not of all sales and transfers of public land by government departments. Whatever meaning — —

The CHAIR — Let me understand this. What you are saying is that the Department of Treasury and Finance, which is responsible for monitoring and the prices received when land is sold or transferred, does not have a register of all public land sold; is that correct?

Mr GIBSON — I have specifically — —

The CHAIR — Is that correct?

Mr TEE — Let him answer.

Mr GIBSON — The question has been put within the department to all the people who would know, and the answer is there is no such list; it is not there.

The CHAIR — Extraordinary.

Mr GIBSON — Be that as it may. The committee also requests that you provide data maintained by the department for sales or transfer of public land by all government departments. Again, after inquiry it is not possible to establish that that data actually exists. It is not whether it is provided or not, it is not with the department to provide.

The CHAIR — So neither Treasury and Finance for its own purposes, nor for its role across the whole government, can you indicate that for neither of those purposes there is a register or list maintained of land sold and transferred?

Ms HART — Can I respond, please? Yes, there is register of land sold maintained. There is not a register of public land sold.

The CHAIR — So the list that is maintained, will you provide a copy of that?

Mr TEE — That is the issue — —

Ms HART — It is outside of the terms of reference.

The CHAIR — In which respect is it outside the terms of reference?

Mr TEE — In the respect that we got correspondence from the Attorney-General clarifying that. Now you want this witness to give evidence about the views of the Attorney-General when we have got his view and we have got his correspondence.

The CHAIR — No, I am seeking that register or that list, whatever you wish to call it.

Mr TEE — That is subject to discussions between this committee and the government.

The CHAIR — I am asking the witness, who is responsible — is it correct that you are responsible?

Ms HART — I am responsible for that list.

The CHAIR — And you are indicating that you will not provide it.

Ms HART — I have been advised that we can only provide evidence today and information to the committee that falls within the terms of reference.

The CHAIR — And we believe this does fall within the terms of reference, or certainly I believe it falls within the terms of reference, and that is why I am asking you to provide that information.

Mr TEE — The answer is the matter is between the Attorney-General and the committee.

The CHAIR — No, I am asking a question of this witness.

Mr TEE — And the witness said — —

The CHAIR — No, I am just asking the witness a question. You are not entitled to answer for the witness.

Mr TEE — I am not answering for the witness, I am just — —

The CHAIR — You are seeking to.

Mr TEE — You are out on a frolic of your own.

Ms HART — I am not sure what more I can say. I cannot say any more on the matter.

The CHAIR — You refuse to provide that document?

Mr TEE — The government has said once we have clarified — —

The CHAIR — No, I am just asking the witness a question here.

Mr TEE — But no-one is refusing. The government's position is that — —

The CHAIR — I have asked the witness a simple question: to provide a document today that she has indicated exists.

Mr TEE — That is outrageous! What you are saying is outrageous.

The CHAIR — It is not outrageous. It is very much critical to the — —

Mr TEE — We are in discussions with the government about the terms of reference — —

The CHAIR — You may wish to ask a question of the witness.

Mr TEE — We are in discussions with the government about the terms of reference — —

The CHAIR — I think we understand that — —

Mr TEE — And once we have got an agreed position, we can then — —

The CHAIR — I am seeking a document from a witness who has provided evidence today, and I am quite entitled to do that.

Mr TEE — About matters that we have got a process for dealing — —

The CHAIR — They are well within our terms of reference.

Mr TEE — There is a different view, and that is the matter we are discussing with government.

The CHAIR — It is a matter for the witness to answer. She is here as an individual — —

Mr TEE — It is a matter for the committee and the government to try to resolve, and then it may be appropriate to ask the witness, once that issue is resolved.

The CHAIR — It is quite appropriate to ask before the round robin with the government finishes.

Mr TEE — It is not a round robin.

The CHAIR — Of course it is.

Mr TEE — We have asked for documents. The Attorney-General has provided a response, and we are in discussions.

The CHAIR — Mr Tee, you may wish to address your question to the committee.

Mr TEE — There is no round robin. Thank you. I have got a couple of questions. The first relates to the 1998 — which is, I think, on page 3 of your submission, which talks about the 1998 administrative arrangements order, which as I understand it divides — —

The CHAIR — 1988.

Mr TEE — Sorry, 1988.

The CHAIR — It is back into ancient history.

Mr TEE — Yes, and that is my point in a sense. As I understand it, that led to a division between government land and public land, and ministerial responsibilities were placed in accordance with whether or not it

is government land or private land. Can you indicate or do you have any understanding of that position; has that changed since 1988 or has that been the position through successive governments?

Ms HART — That position has been in place through successive governments. There has been no change whatsoever.

Mr TEE — My other question goes to another part of your submission on page 16, paragraph 54, just dealing with the interaction, as it were, or the process. The question relates to local council, and I really want to get a sense of the interaction of the processes that you have outlined in your submission and the local council. When is their buy-in, and on what basis does that occur? It is alluded to in para 54, and I was just wondering if you could provide us with some detail.

Ms HART — Sure. The engagement with local council is conducted in accordance with the policy and instructions I have referred to in my statement, and that provides us with an opportunity to offer property to council. Council will sometimes also contact government, because sometimes councils will be aware of a property becoming surplus, because of their involvement in planning changes potentially or because of community interest or awareness, and so the dialogue will either be from council or from government to commence those discussions about whether there is a suitable public purpose for a municipal council to consider introducing at that site.

Ms PENNICUIK — I think we are having confusion about this submission from the Department of Treasury and Finance, the letter from the Attorney-General and your evidence today, which seems to be pointing to the fact that public land is all sorts of different varieties of public land. So I would say that in terms of the community, it thinks that public land is land that is not private land, and in fact that is the definition in the dictionary — public is what is not private. So in terms of the community I would like to clarify where we are with the situation. I have looked at the Attorney-General's letter and I have looked at the administrative order, and I do not see in any of the words here — and perhaps Mr Gibson can help me — where public land cannot mean all public land that is not private land, which is what the terms of reference are aiming at.

In your evidence you say in some places there is public land which has public importance, which cannot be sold; there is government land, which can be sold; there is Crown land; and then on page 6 it says all Crown land is considered to be public land until it has undergone an assessment process. Then in the government's submission there is a whole list of things about what is important public land, which I think is confusing the issue.

Mr Gibson, perhaps you can explain to me how this piece of paper that we have been given, the order in council from 1988, tells us that we cannot talk about all public land — that is all land that is owned by the public, by the taxpayer, as in not owned by private citizens, cannot be considered by this committee?

Mr TEE — Is that the document that was circulated at our previous committee meeting, because I do not think it is an accurate — —

Ms PENNICUIK — It is the document that is attached to the Attorney-General's letter — the same thing.

Mr TEE — I think that was attached subsequently, and I do not think it does have the definition. I have circulated to the committee — —

Ms PENNICUIK — That is why it is confusing, and that is why I am asking Mr Gibson if he can clarify the issue.

Mr TEE — Yes. I am just saying I do not think that is the right attachment.

The CHAIR — That is the order he references, though.

Ms PENNICUIK — That is the order that is attached to the Attorney-General's memo.

Mr TEE — Have a look. I have sent out an email, because that has a number of attachments, and if you work your way through, that is where the information comes from.

Ms PENNICUIK — Even so, I would still like an answer to that question.

Mr TEE — I am just clarifying it.

Ms PENNICUIK — The document that is attached to the Attorney-General's letter sheds no light on the issue whatsoever.

Mr TEE — I do not think there was a document attached. I think the committee subsequently attached the document.

Ms PENNICUIK — The document referred to by the Attorney-General's letter.

Mr TEE — Yes.

Ms PENNICUIK — Perhaps Mr Gibson could help with that issue, because obviously this committee is looking at the issue of public land on behalf of the community, and the community needs to be sure what status we have here in terms of public land, which I think the community understands to be land that is not owned by private citizens.

Mr GIBSON — The relevance of the administrative arrangements order and the administration of acts order goes back to the fact that under the Land Act, and indeed under the Crown Land (Reserves) Act, there is no relevant definition of public land.

In 1988 the then Premier, John Cain, decided that there should be a split in function between the sale and alienation of land, which was going to be handled by one minister, the Minister for Property and Services, and land which was not going to be put for sale and alienation, which was to remain with the Minister for Conservation, Forests and Lands, and that was achieved by both an administrative arrangements order, which is no. 58, and by an administration of acts order.

The key point is that, because the law did not change, it became necessary for the two ministers to know what their respective obligations were, because only one of them had the power of sale. That remained true for the next 20 years and is still true. Only the Minister for Finance, WorkCover and the Transport Accident Commission has legal power of sale of Crown land, and the other minister — obviously the name has changed over the years — does not have that power of sale, hence the need to put in place a legal arrangement that enabled one minister to know that they had the power of sale and conversely to say what was not within the power of the other minister.

That was achieved by another administrative arrangement, which was an agreement that was provided by the Premier for signature by the two ministers. It is that document that was signed by the then Minister for Conservation, Forests and Lands and the Minister for Property and Services which sets out very clearly that definition of public land in contradistinction to government land. That is what Ms Hart has been describing in her evidence that has been the foundation for invariable practice by all governments ever since 1988, and that therefore becomes the distinction that has been put in evidence today.

The CHAIR — With respect, though, to understand this a little bit further, the Parliament has given a definition of public land in its terms of reference and in the debate in the chamber, and it seems to me that some convenient administrative split by the government has actually got no standing or status for that. The simple fact is that 'public land' means public land in the terms of the community's view and definition, and I would put it to you that this is simply an attempt to narrow the committee's aspects and what it can look at through a dubious administrative device.

Mr TEE — It is an arrangement that has been in place for over 20 years.

The CHAIR — That is irrelevant, because the committee has been given a charge to look at public land by the Parliament.

Mr TEE — And you want to overturn 20 years of administration to put in place your definition.

The CHAIR — The community has a definition, and that is what was referred to in the chamber.

Mr TEE — Or you can follow the suggestion of the government, and that is work with the government to amend the terms of reference.

The CHAIR — But there is no problem with the terms of reference. They are fine. I put it to you, Mr Gibson, that the community has a view on what public land is that may be different from what your administrative decisions as outlined a moment ago might suggest.

Mr TEE — But isn't there an onus on us to clarify that then?

The CHAIR — The community is quite clear. I am asking Mr Gibson.

Mr GIBSON — I am not able to comment on the community view of the meaning of 'public land'.

The CHAIR — You could at least concede that it might be different from some administrative order.

Mr GIBSON — Secondly, I am not aware of anything in the committee's terms of reference given by the Legislative Council that does define the meaning of public land.

The CHAIR — It is the simple meaning of the community, and the dictionary might be a good start.

Mr TEE — Or the government's practice over the last 20 years might be an even better start.

Mr GIBSON — The third point that I have to make is that the Attorney-General has expressed the view of the government as to what meaning should be given, and that of course is the view that all government witnesses are bound to reflect.

The CHAIR — Slavishly, perhaps.

Mr GIBSON — I am not supplying adverbs. I am merely saying that — —

The CHAIR — You even smiled a little there!

Mr TEE — The government has got a view.

Mr GIBSON — We are bound to follow what the Attorney-General has expressed on behalf of the government.

Ms PENNICUIK — Mr Gibson, I was just wondering, given what you have said — and I think I understand there is an administrative split between public land and government land for the purposes of administering the act or the acts and the ability of one minister to sell land and another minister not to — does that in your legal opinion preclude us from considering public land as in the dictionary definition? Because you are talking about an administrative definition, and we are talking about a wider definition.

Mr GIBSON — I suppose the view that has been adopted is that the committee is bound by its terms of reference. The committee can only do what the Legislative Council has authorised it to do, and it is a matter of interpretation, as in all cases, to interpret what the Legislative Council properly meant in using the words it used.

Ms PENNICUIK — Can I ask you another question? In the terms of reference there is also the term 'public open space'. Where would public open space fit in terms of public land and government land?

The CHAIR — A little tricky, isn't it?

Mr GIBSON — The government submission, on page 4, does indicate what view has been taken of public open space. Of course not all public open space is Crown land. The government has nothing to offer on the public open space that might be held by a public authority or a municipal council or something like that, which is clearly not Crown land and therefore, for the reasons I have just given, would be outside the appropriate definition of public land. I am not sure quite what the question is, but that might move forward some understanding of how we have interpreted that expression 'public open space'.

Ms PENNICUIK — The question is that public open space could be public land or it could be government land, could it not? It could be Crown land.

Mr GIBSON — Government land, at a certain point, could have a zoning that was matched to public open space. I understand that Ms Hart in her statement indicated that of course the sale could not proceed until that zoning had been changed. Is that correct?

Ms HART — That is correct.

Mr O'DONOHUE — Thank you for your time this morning and for your evidence. If I could just take up a couple of points from your statement, Ms Hart. You talk about public land being surplus to operational requirements. Is there a definition of 'surplus to operational requirements'?

Ms HART — I do not know if there is a definition. When I referred to 'surplus to operational requirements' I was making reference to the asset management framework. Within that there is an obligation on government departments and agencies to make sure that they are managing their asset portfolios very efficiently. Sometimes an asset over time will no longer be contributing to service delivery. If that then is identified as a surplus asset, whether it is a piece of land or buildings or other infrastructure, then those proceeds from the sale can be returned to the Consolidated Fund to reinvest in more effective infrastructure, for example.

Mr O'DONOHUE — So in identifying land as surplus the government looks at the efficiency of that land and whether perhaps the market value of that land could be better used elsewhere?

Ms HART — The first part of what you said is right. They look at the efficiency of how that land or that property or infrastructure is contributing to the delivery of outputs or services for the community.

Mr O'DONOHUE — And how do you define that with reference to public land, with reference to things such as open space and community facilities, given there is no economic figure that can be put on, for example, the value of a piece of public space?

Ms HART — Did you ask the question in terms of public land? The difficulty I have in responding is that what I sell is government land.

Mr O'DONOHUE — There is land that is identified to be sold by the government.

Ms HART — Yes.

Mr O'DONOHUE — How do you identify efficiency or a lack of efficiency given that you cannot put an economic figure on the benefit of land that is used for a public open space purpose?

Ms HART — That is going to always be a matter for the department or agency that is the custodian of that land or infrastructure. They are the ones who make the surplus declaration. My area does not determine a piece of land falling in another portfolio as being surplus so that it can be sold. Every department or agency will make that assessment based on factors like what that property or infrastructure is contributing to a whole range of things.

Mr O'DONOHUE — It is a subjective test basically, depending on department to department.

Ms HART — I think it is a subjective test, yes.

Mr O'DONOHUE — Okay. Can I just ask too, you have not given evidence in relation to government land that is alienated but not sold. I know you cannot talk about specific cases, but in the hearings we had in relation to the Kew Cottages project the issue there really was the development agreement. There was no actual transfer of ownership. The government was the developer, the planning authority and received the profit from that development without an actual transfer of ownership until much further down the track.

Mr TEE — Surely if we are going to ask the witness a question in relation to a particular matter we should give her notice, as per the guidelines she has been advised of.

The CHAIR — He is using it as an example. I think it is quite in order.

Mr O'DONOHUE — The question relates to how does your statement and your role sit vis-a-vis developments of public land that do not require the transfer of ownership? What role do you have in that process, if any?

Ms HART — I am just trying to clarify your question. In the transfer of property but without a transfer of ownership?

Mr O'DONOHUE — That is right. A situation where the use of the land has changed and a situation where some may say that the land has been alienated, but there has in fact been no transfer of ownership. What is your role in that process?

Ms HART — If it was a property that was held by my department, then my minister was responsible, my area would have a role in relation to issuing a lease, if that is what was being contemplated. I said in my statement that in fact we have a number of properties that we manage, and some of those have short, medium or long-term leases in place.

Mr O'DONOHUE — Okay. So the actual establishment of the change of use would get back to that subjective analysis you referred to previously by each individual department or — —

Ms HART — To clarify what I said earlier, it is not just one person in the department that identifies a piece of land as surplus.

Mr O'DONOHUE — I understand that, yes.

Ms HART — It requires approval from a ministerial level. You need to have a business case. You need to be able to really demonstrate that it is surplus.

Mr O'DONOHUE — But there is no objective set of criteria used by government departments? It is a department-by-department analysis.

The CHAIR — No common guidelines.

Ms HART — To my knowledge there are not guidelines. There is not a check list that says, 'If something meets all of these criteria, it is surplus'.

The CHAIR — Or guidelines in terms of process that departments would go through in making the judgements that Mr O'Donohue was alluding to.

Ms HART — You seem to be turning the question into something else. I am not quite sure where you are wanting me to respond here.

The CHAIR — It is quite simple. Mr O'Donohue has pointed out a situation where land is alienated through some process other than sale, or the property is sold and there needs to be some decision, which you have outlined is a subjective decision by various departments, and then you would take some role in the latter phase of that. Are there some guidelines or a process that departments are requested to go through as they make those judgements?

Ms HART — That would be a matter for each individual minister in terms of — —

The CHAIR — So there are no guidelines or process that are imposed by your department?

Ms HART — I think I already answered, and I said, 'Not to my knowledge'.

The CHAIR — Not to your knowledge. But I asked also about process, not just a check list but what steps they need to go through.

Ms HART — Yes. I understand that. I have only had one instance myself where there has been a property that I have identified as potentially surplus, and before getting that to a point of briefing the minister it was a very comprehensive testing of why do we think this is surplus — what are the implications of actually continuing to hold this property in terms of whether it is a good investment? Because sometimes government owns properties that the private sector is occupying, and if that property is not operating efficiently, in essence you will end up subsidising the private sector. It would not be a good use of public funds, I would expect.

The CHAIR — But there is no whole-of-government approach?

Ms HART — I have already answered that.

Mr O'DONOHUE — I suppose if I could just add on to that a comment that whilst the government needs to legitimately maximise its return on its land, it does not have the same economic imperatives as the private sector has, in that it does not pay council rates, land tax and other holding costs that the private sector has to pay, but that is a separate issue.

If I can just move to the issue of rezonings: if you own land as a private citizen or a corporation, you need to get the minister's approval to commence a rezoning process. You have to follow a range of steps in compliance with the local government planning procedures and then the planning minister has to eventually sign off on the rezoning at the end of that process. What process does the government undertake in rezoning land.

Ms HART — The process in terms of rezoning land? I think we follow the guidelines that the government has put in place in terms of sale of properties. We must undertake all of the same steps as anyone else. We consult with council; the community gets involved. You need to make a case. We will often have to present to a council if we are proposing a rezoning, because at the end of the day the local area may not agree with the proposed zoning.

Mr O'DONOHUE — Does that include panel hearings if the potential rezoning has objectors or other people who disagree with the proposed new zoning?

Ms HART — Yes, I think it may.

Mr O'DONOHUE — It may?

Ms HART — I have not been involved, and that is why I am not saying, 'Yes, definitely', but I know that sometimes we will go and appear before council in order to put a case for a rezoning.

Mr O'DONOHUE — So before you commence the rezoning process do you require the planning minister's approval as a private citizen would?

Ms HART — The planning minister's approval of a rezoning is not something that we seek before we go and have a conversation with the council in order to undertake — —

Mr O'DONOHUE — Under the new requirements this government has introduced, before you can commence the formal rezoning process the planning minister actually has to approve that that process can go ahead. Do you as the government have to undertake that same process?

Ms HART — I do not know the answer to that question. It is just a transactional question. I could take it on notice and come back to you in writing.

The CHAIR — Thank you.

Mr O'DONOHUE — I understand what you are saying, but I think members of the public would see it, more than a transaction question, as a matter of equity and fairness — that the same rules that apply to private citizens and corporations also apply to the government. Anyway, I appreciate that you will take that on notice and come back to me.

Mr TEE — It might just be that it is a matter for a different witness. That is the only — —

Mr O'DONOHUE — The government in its budget this year has a target of \$70 million of funds from the sale of public land, Crown land. Do you see any conflict of interest between the objectives of meeting the target set by the government and having land either stay in public ownership — retaining public ownership — or having a zoning that best reflects the community wishes? As an example, you may have a piece of land that is identified as surplus to requirements. If it is zoned, for example, business 1 or commercial land, it would be worth much, much more than if it is zoned residential 1 or low-density residential or public open space. Do you see any conflict in that rezoning process and in the need to meet the government's target for proceeds from the sale of land?

Ms HART — You are asking me for my opinion.

Mr TEE — On a planning matter.

The CHAIR — No, on a matter that is contained in the government's — —

Mr O'DONOHUE — This relates to the statement you made.

Ms HART — You are asking for my opinion, though, and would I not contravene the code of conduct if I provided an opinion?

The CHAIR — No, he is asking for a fact, as I understand it — whether there is a conflict or not.

Mr TEE — He is asking for her view.

Mr O'DONOHUE — I do not need assistance, Mr Tee, thank you.

I am asking you to answer the question.

Ms HART — You asked whether I thought there was an inconsistency, which to me sounds like you are asking for my opinion.

Mr O'DONOHUE — You do not wish to answer the question?

Mr TEE — She does not want to give her opinion.

Mr O'DONOHUE — I do not need your assistance, Mr Tee, thank you.

Ms HART — I am not able to express an opinion. I can only provide facts.

The CHAIR — I want to return to the issue of the list of land that has been sold over the last five years, which, as Mr Tee points out, is a matter of dispute between us and the government.

Mr TEE — Discussion.

The CHAIR — 'Dispute' is the word I would use, but that is my opinion. The government has indicated a certain definition of government land. Some of the items on that list would fit the government's definition of government land. Would you provide the list of the sales over the last five years that meet the government's definition?

Ms HART — Of government land?

Mr TEE — Can I just be clear: are you asking this in your independent capacity or are you asking this as a bit of a frolic of your own? The committee has not determined to go down this line, the committee has determined to go down the proper line.

The CHAIR — That is not correct, Mr Tee, as you are aware. I am asking the witness, who has provided a statement to us today and provided a response to my earlier questions, whether she would provide the list over the last five years of government properties that fit the government definition of government land that has been sold.

Ms HART — In my statement today I made reference to government land by way of background, because I think that helps with the picture of explaining or understanding the process of actually selling Crown land, but government land is not something that is covered in the terms of reference.

The CHAIR — You have described in your own terms how — —

Ms HART — I have described government land in order to provide background to the committee.

The CHAIR — I would see that the committee's terms of reference deal with public land, which is a broad concept. The Attorney-General has sought to narrow it, as have you today in your evidence, to something you call 'government land' that relates to an administrative order from 1988. You have indicated that you will not provide the full list of government land that has been sold over the last five years. Now what I am asking is: will you provide the list of government land that accords with the Attorney-General's definition in his letters and in the administrative order that has been sold?

Ms HART — I do not know how to respond to that question.

The CHAIR — Yes or no is a good start.

Ms HART — The difficulty I have is that I have explained that before something comes to my area to be sold an assessment occurs, and if it is identified as public land I do not sell it.

The CHAIR — I think you are being obtuse here. I am being quite clear. The government thinks there is a subset of public land which it calls 'government land' — its definition: the administrative order. The Attorney-General has referred to it, you have referred to it and you have referred to it. I am asking: would you provide that list — the printout as it were — over the last five years of sales that conform with the government's definition?

Mr TEE — Or would you require some time to consider it in view of the guidelines on the questions that were provided to the witness?

The CHAIR — No, I am just asking a simple question.

Mr TEE — You are ambushing the witness.

The CHAIR — No, I am not.

Mr TEE — Yes, you are.

Ms HART — I think, in terms of what information you would like, a list or whatever other information, needs to be outlined because we are having a debate now about whether something is clear or not. I think if it were clear — —

The CHAIR — I think it is quite clear. We are asking for the land on that list that fits the government's definition of government land.

Mr TEE — Why do you not just put it in writing so that she can consider it.

The CHAIR — I am asking her now.

Mr TEE — You are ambushing the witness.

Ms HART — I have responded, and I have said — —

The CHAIR — I am not ambushing the witness. I am indicating to the witness that I think the witness is being obstructive and indulging in the Attorney-General's round robin that we deal with.

Mr TEE — The witness is entitled to a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these proceedings.

The CHAIR — And I have referred to her own preparation, her own presentation. She has talked about government land — —

Mr TEE — Yes, but nowhere has the witness been asked to provide a list of property.

The CHAIR — No, the department has, and she indicates she is aware of the correspondence between the committee in her own statement.

Mr TEE — Yes, that is right, and now you are asking, to circumvent her — —

The CHAIR — Now I am asking her, pursuant to this. I think you are being a bit silly, Mr Tee.

Mr TEE — I think you are being outrageous in ambushing the witness.

The CHAIR — It is a simple question to ask, and the answer from the witness is — —

Mr TEE — The answer is — —

The CHAIR — No, you cannot answer for the witness. I would like the witness to answer. I want to be quite clear. You will provide that evidence or not?

Ms HART — I answered, and I said I would appreciate it if you could make the request in writing to my secretary.

The CHAIR — We may well do that, but separately from that I am asking you today: will you provide that document? You are authorised by the secretary of the department to appear here within our terms of reference, and I am asking you to provide a document.

Mr TEE — You got your answer.

Ms HART — And we have been having a debate about whether what you are asking for falls within the terms of reference and is therefore something I am in a position to say I can provide.

The CHAIR — So you cannot say you will provide that today.

Ms HART — I do not feel as though you and I have a common understanding of what it is you are asking me for.

The CHAIR — I am asking within your definition.

Ms HART — And within my definition of government land that falls outside of the terms of reference.

The CHAIR — All government land that is sold falls outside the terms of reference? Is that what you are saying? Is there any government land that falls inside the terms of reference?

Mr TEE — The terms of reference deal with public land, as I understand it.

Ms HART — Are you now asking me about specifics?

The CHAIR — Is there any government land that is sold that falls inside the terms of reference?

Ms HART — No, because by — —

The CHAIR — None at all? No public land?

Ms HART — By nature of the fact that it has been assessed as government land it is not public land.

The CHAIR — I see, so a site like Kew Cottages that is to be sold would not form — —

Ms HART — I am not in a position to speak about individual sites.

The CHAIR — I see.

Mr TEE — Put it in writing. It is outrageous that you are demanding of the witness that she agree to something which has not been requested previously.

The CHAIR — I think she is being obstructive, and you know it.

Mr TEE — If the committee decides to proceed down that line, we will put it in writing and send you a request.

The CHAIR — I, as a member of the committee, have sought that information and the witness has refused to provide it.

Mr TEE — I do not think that is right. The witness has said she is not going to be ambushed, which is her right under the guidelines, and she would like — —

The CHAIR — Mr Tee, you may have a further question. We have established the witness is going to obstruct — —

Mr TEE — The witness has indicated she will not be ambushed. She is happy to look at your request.

The CHAIR — It is an outrage that a government witness who is here to provide evidence to a parliamentary committee would not do so, and this is not disputed evidence; it is evidence — —

Mr TEE — She is simply asking that you put it in writing.

The CHAIR — You might like to proceed anyway with your next question.

Mr TEE — I do not have any further questions, thank you.

The CHAIR — Mr Thornley, welcome. Do you have any questions of the witnesses?

Mr THORNLEY — Not immediately, thank you.

Ms PENNICUIK — I think it is unfortunate that you have been put in this position by the government dillydallying around on the definition of ‘public’, which is a fairly easy word to understand. I feel for you that you have been put in this position about public land and government land and Crown land, when we all know that we are talking about land that is owned by the taxpayer. Nevertheless, I just wanted to ask a couple more questions. I wanted to go along the line that Mr O’Donohue was trying to get out before, which I do not think I heard the answer to, which was about alienation. What is the role of the Department of Treasury and Finance when land — public land, government land — owned or managed by a department, is given over to a private entity in some way or other for development and/or use? What is the role of the department in that? Would it be that the Department of Treasury and Finance would always have a role in that, or may not have a role in that?

Ms HART — The Minister for Finance, WorkCover and the Transport Accident Commission is not the only minister who may enter into leases. Therefore, my department would not always have a role in relation to leases. However, I would just refer the committee back to the department’s submission, which actually adopted an interpretation of alienation as being transfer of title.

Ms PENNICUIK — The Webster dictionary also gives a different one which says the giving over of the control, or the transfer of the title property or other right to another. It does not have to act naturally. It depends which definition or dictionary you want to use, does it not? However, all dictionaries define public as not private.

Mr GIBSON — Chair, I think it might be appropriate if I commented briefly on this leasehold issue.

Ms PENNICUIK — That would be very helpful.

Mr GIBSON — If you go to the administrative arrangements order throughout there is a very clear distinction between the allocation of responsibility on the sale and alienation on the one hand, which clearly belongs to the now Minister for Finance, WorkCover and the Transport Accident Commission, and the lease and licensing of land which is clearly allocated to the minister who is not in that department — —

The CHAIR — The responsible minister, as it were.

Mr GIBSON — The other minister also responsible for Crown land, and the thread that runs right through is the clear distinction between leasing and licensing on the one hand and sale and alienation on the other. Now it is possible that there might be alienation that is other than sale, although it is a real puzzlement as to what that might be.

The CHAIR — Can I give you an example?

Mr GIBSON — This is clear. Lease and license is not alienation, and that is evident on the face of the administration of acts orders.

The CHAIR — Easements — do these fall within what you would regard as alienation?

Mr GIBSON — I would like to take that on notice. It is an interesting question of property law that I have not — —

The CHAIR — The government proposes, for example, to build a large desalination plant near the coast and there will be easements across that land. That is public land, and it seems to me that at least on the surface it may impact on the value and the future of that land. In that sense there may be an alienation.

Mr TEE — That is a good one to take on notice.

Mr GIBSON — Yes, that is a legal question. That really involves a question of whether what is being alienated represents some sort of fee. Most of the references —

The CHAIR — Or right or access.

Mr GIBSON — That is a right, which is not a separate title. That is why I would like to take it on notice.

Ms PENNICUIK — I am not sure who is going to answer this.

Mr GIBSON — I wanted only to intervene on that question of leases and licences as alienation. I am happy to hand back to Ms Hart on the broader question.

Ms PENNICUIK — You might have to answer this one too. In your evidence, and I think in the government submission it says public land values that Department of Sustainability and Environment assesses land in terms of public land values; are they the list of dot points that are on page 3 of the government submission? Is that the same thing? Is that what is meant by public land values?

Ms HART — Yes.

Ms PENNICUIK — Mr Gibson you might be able to answer this. Given that there is an administrative order that says government land is public land, how is it assessed that something is public land and cannot be sold and something is government land and can be sold? What criteria are used?

Mr GIBSON — I think that is a question for you.

Ms HART — My area is not the area that undertakes the assessment. Even though I mentioned that by way of background in my statement, I think that that —

Ms PENNICUIK — I think this is a wider question. It is before it gets to you. It is about how is land set aside as land that cannot be sold.

Ms HART — That is my difficulty. My area does not make that assessment.

Ms PENNICUIK — Mr Gibson, perhaps you know the answer to that, because you referred to it earlier in earlier evidence. You were saying, when you were trying to explain to me the administrative order, that there was land that cannot be sold and is managed by DSE, and then there is land that can be sold. How do we decide which is which, that is my question?

Ms HART — My statement actually said that the Department of Sustainability and Environment undertakes that assessment.

Ms PENNICUIK — Okay.

Mr GIBSON — That is good.

Ms PENNICUIK — Can land move from one category to the other? Can it move from cannot be sold —

Mr GIBSON — I think the view that is taken is that all Crown land — the default position is that Crown land is public land. Once an assessment has determined that it is not, then it is government land and available for sale.

Ms PENNICUIK — So once an assessment by DSE has determined that it does not have public land values, is that right? I am just trying to clarify this for the community because I think the community would be very frustrated by what they have heard today about government land, public land. The community is out there fighting

bushfires, trying to keep their bits of public land or government land from being taken from them, so they get very frustrated if they are getting bogged down in this argument about what is public land and what can and cannot be sold and why. I am trying to clarify that. What happens is the default position — and this is really helping us get to the nutshell of it — is that all Crown land is public land unless it is assessed as otherwise?

Ms HART — That is correct

Ms PENNICUIK — There is a definition called ‘permanently reserved Crown land’. Can you explain that definition, and does ‘permanent’ mean ‘permanent’ as in the dictionary definition of ‘permanent’, or can it become less permanent as time goes on?

Mr GIBSON — I think that was dealt with in Ms Hart’s submission. Under the Crown Land (Reserves) Act) — —

Ms PENNICUIK — It is not really defined. If you can help me, that would be good.

Mr GIBSON — Under the Crown Land (Reserves) Act, it is possible to reserve land for a huge range of purposes, some of which look more public than others, but at any event there are two categories of reservation — temporary and permanent. Once land has been reserved permanently, the only way that that reservation can be lifted is by legislation, so virtually annually a bill is put to the Parliament lifting reservations on permanently reserved land. It is possible to lift a temporary reservation, I think, by order in council.

Ms HART — Yes, and through the *Government Gazette*.

Mr GIBSON — And that is gazetted, and there is a process of notice, but, no, a permanent reservation is permanent until the Parliament of Victoria decides otherwise.

Ms PENNICUIK — Thank you. I just want to follow up another question which was about the budget target of \$70 million. I know there was a bit about whether you could answer a question, but it would be seem to me that the first question would be: do you know how that target is set?

Ms HART — The target would be set by reference to an estimate that my area would inform of what properties are likely to be identified or have already been identified as surplus and therefore might be sold. So, for instance, for this current year it is a higher target than last year, and that is reflecting the fact that there are quite a few Department of Treasury and Finance properties that have come to DTF at some stage or other — some of them, for example, through the privatisation of utilities in past years — so those are sites that we had identified and we might have been remediating and we are now getting close to sale point.

Ms PENNICUIK — So, Ms Hart, you are saying that you would do an estimate, so that \$70 million comes from an estimation from DTF?

Ms HART — Yes, that is correct.

Ms PENNICUIK — Based on what you know has happened or could happen?

Ms HART — That is correct.

Ms PENNICUIK — I have some more questions, but I might see if others do.

Mr O’DONOHUE — On page 9 of your evidence, paragraph 29, it says that the asset management framework is designed to — and if I can take you to 29.8 — clarify incentives and increase revenue flexibility available for departments to effectively and efficiently manage asset holdings. What sorts of incentives are you talking about?

Ms HART — The incentives are essentially around the way departmental appropriations work. I think it is getting outside my area of expertise to go into detail, but my understanding of it is that departments can obviously, by releasing a property that is costing a lot of money, end up then using those funds that they might have spent on depreciation and other expenses on other more effective properties — properties that help deliver the outcomes in a less costly manner.

Mr O'DONOHUE — So there is an economic incentive to dispose of land?

Ms HART — I do not think I can answer that. That is not the conclusion that I would draw from what I said.

The CHAIR — So you are answering it?

Ms HART — I guess I am. I am saying no.

Mr O'DONOHUE — If I could take you to page 16 of your evidence, in paragraph 51.1 you refer to exceptional circumstances. What would be an example of exceptional circumstances?

Ms HART — I do not have an example because, as I said at the start of my statement, I have been in this role for approximately 12 months, and in my experience I have not seen an exceptional circumstances case come across my desk, so I cannot give you an example.

Mr O'DONOHUE — So you cannot answer that?

Ms HART — I am not able to give you an example.

The CHAIR — She might be able to take it on notice and come back with a list of examples of exceptional circumstances, or perhaps some recent studies.

Ms HART — I am not sure that I am able to provide evidence or that we are able to provide it in terms of specific sites.

Mr TEE — It might be a matter for DSE.

Mr O'DONOHUE — With the greatest of respect, you have referred to it in your statement, so I do not think it is unreasonable to ask you to define what you mean by that statement.

Ms HART — That is true, but I am taking that reference from the government land monitor guidelines.

Mr O'DONOHUE — Where you get material, again with respect, is not relevant to our purposes — —

Ms HART — My point is that I do not have a role in actually seeking the Minister for Planning's approval for those exceptional circumstances.

Mr O'DONOHUE — There is not a list? Again, exceptional circumstances is not defined.

Ms HART — I think that would be a question for the Department of Sustainability and Environment or for the government land monitor.

The CHAIR — Or the Minister for Planning.

Ms HART — Or the minister.

Mr O'DONOHUE — In paragraph 61 on page 17 you referred to an assessment of whether land has any public land value. Can you give any greater clarity as to what public land values means and what you are referring to?

Ms HART — I think we have outlined that in the department's submission.

The CHAIR — Which you are familiar with?

Ms HART — Which I am familiar with, that is correct, and in terms of questions already this morning, we referred to page 3, I think it was, that actually lists a number of criteria for public land.

Mr TEE — You are saying it is going over old ground.

Mr O'DONOHUE — Without being pedantic, there could be a difference between that definition of public land and public land values, but I take your answer and we will move on.

Can I ask: is the department on track to achieve the \$70 million budgeted this financial year, given we are one-third of the way through the financial year and you have been able to identify land that is for sale — for example, the 100 acres at Devilbend that is for sale at the moment? Are you on target to achieve the \$70 million target?

Ms HART — Yes, we are on track. I will add a but to that statement, which is that a lot of the time a lot of the sales work happens during the year and it is not until you reach the last quarter of the financial year that you work out whether in fact you will get over the line. And sometimes things happen such as the zoning that we were seeking on a property does not get approved and the council will make a judgement that it does not support something that we are proposing and that will reduce the value of the property and will therefore mean that we are less likely to achieve the target.

Mr O'DONOHUE — That is, to take that point and explore what I was getting at before, how do you balance the competing objectives of the best zoning of surplus land in the community's interest and meeting the commercial interests or goals of the government as identified in the budget papers?

Ms HART — You are asking me for my opinion again.

Mr O'DONOHUE — No, I am asking how you balance those competing priorities?

Ms HART — The government land monitor guidelines, talks about preparing properties for sale to maximise the return, and I cannot remember exactly the reference, but they talk about zoning:

The most appropriate zoning for the land must be established and put in place before the sale to ensure that the highest possible return is achieved.

Mr O'DONOHUE — Okay, so the commercial interest outweighs the public interest?

Ms HART — I act in accordance with the guidelines.

Mr O'DONOHUE — Fair enough, thank you. To go back to a point you were discussing previously, just to clarify, you cannot say whether the state has to comply with the same procedures in the rezoning of a piece of land as a private citizen or a private corporation would have to?

Ms HART — We have already taken that question on notice.

Mr THORNLEY — I would just like to understand a little bit more about the target levels. These are pretty lumpy transactions; I presume some are big, some are small. In most businesses I am familiar with you have got some portfolio or deal flow coming through and it is fairly difficult to work out exactly which ones are going to come through, so you take some sort of weighted average kind of approach to assessing what revenue you might be likely to achieve over the forward going period. Is that roughly the sort of process you go through?

Ms HART — That is correct. I mean, the reason for a target is so that if I sell a certain volume of land, or my area sells a certain volume of land in a given year, that that revenue is not a surprise for budget planning purposes. Similarly, I will keep our budget area informed if it is looking like we will not achieve a target, which can happen.

Mr THORNLEY — Which, depending on some sort of lumpier or larger transactions, could mean that you could end up over or under budget in any given year, I presume.

Ms HART — That is right.

Mr THORNLEY — If you were in a situation, for example, where you were awaiting a zoning and that zoning was likely to result in a significant uplift in value, would you then be more likely to hold that sale over.

Ms HART — We would always try to have the zoning resolved before the sale. That would be a preferred position.

Mr THORNLEY — Right, so the value would take a higher precedence than the target?

Ms HART — Yes. I would not put it in those terms; I would put it more in terms of providing certainty to the public, the people who might be interested in that property.

Ms PENNICUIK — I wanted to ask whether the minister has any role in setting the target for the sale of surplus land?

Ms HART — No.

Ms PENNICUIK — No. I wanted to ask too whether having that target creates pressure to find land. You were saying before that you might not reach the target. Do you feel under pressure to find other surplus assets?

Ms HART — No, because that target was set having regard to the properties that we thought would be available for sale this year.

Ms PENNICUIK — I am interested in the role of the community and local government in particular in identifying surplus public land. Can you explain how that works?

Ms HART — The role of the community in identifying surplus land?

Ms PENNICUIK — Yes, the community via the local councils.

Ms HART — In identifying surplus land?

Ms PENNICUIK — Yes, do they have any role there? Let me turn it around, just leave that question and start another one. In terms of rezoning, if the community via the council, for example, is opposed to the rezoning you are proposing or wishes a different rezoning, how is that worked out?

Ms HART — It will end up in the space that we will not get the rezoning we are seeking, and so potentially that means that the property will be sold with a different zoning, if in fact it gets sold. And sometimes, what will happen is that the dialogue with council and with the community actually highlights a desire on the part of that municipal council to acquire that site for public purposes; so often sites we will be intending to sell, and then part way through the process will work out that there is actually a public purpose identified, and we will proceed with sale to council.

Ms PENNICUIK — That is a good segue into my next question which is about the sale of public land to councils and other departments, just to clarify for the public record. What we have, I suppose, is land that is owned by the taxpayer, being bought by the taxpayer. Has it always been the policy that another government agency or a municipal council must acquire the land for market value? Think about a piece of land that has been forever public; it is being sold to another public entity and so basically it is just shuffling around taxpayer's money. Has that always been the policy?

Ms HART — I am not sure if it has always been a policy. It has certainly been a policy for the last seven years.

Ms PENNICUIK — Do you know of any instances where that policy has been set aside?

Ms HART — No.

Ms PENNICUIK — In your submission and in the government submission it says that the minister can direct that land be sold or transferred for less than what the public land monitor is saying, or the land valuer is saying. The minister can actually override the land monitor or the valuer. Do you know of any instances of that?

Ms HART — In terms of my experience in this area, a property would occasionally have come to my area in order to sell, and then be identified as no longer something that should be surplus. In that instance, yes, I can imagine that we would seek approval to transfer it back to the department that had originally thought it was surplus but now determines that there is an ongoing need for that property. It would not make sense, if they had actually asked us to commence a sale, for us to then sell it back to them, if we had really only been holding it as custodian.

Ms PENNICUIK — I was thinking more of selling from — just for argument's sake — the department of education to the department of health, or from any department to a municipal council.

Ms HART — Selling for less than the valuer-general's valuation? They always get sold at the valuer-general's valuation. Sometimes — in fact always — the public purpose is part of the information that we

provide to the valuer-general's office in getting the valuation. Valuing land for a public purpose will generally result in that land having a lower value than if it was a residential zoning, for example. That council is purchasing the land at market value, but it is the market value for that zoning.

Ms PENNICUIK — Indeed. Sometimes there are examples where the council is unable to afford it. Even though there is a good public interest for the council to acquire that land, they cannot afford it. That is why I am chasing that line of questioning.

I just want to move to the issue of contaminated land. In paragraph 57 on page 17 it says that if an agency is selling land that is contaminated, it needs to decide whether to clean up the site or sell it in its contaminated condition. Is that based on any policy that there is some leeway for the government to not clean up its own contaminated sites before they are sold?

Ms HART — The government can sell land either cleaned up or in the state it is in. What we always do is undertake a number of assessments and checks. Sometimes a purchaser will be happy to purchase a site with full knowledge of a level of contamination. All of the information that the government has will be attached to the contract and provided to the purchaser. In most of the transactions I have been involved in, we actually clean up. That is more common, in my experience.

Ms PENNICUIK — So there is no policy that assumes that the government would clean up its own contaminated sites before they are sold, whether or not someone is happy to purchase it contaminated?

Ms HART — I think you have to start looking at the EPA guidelines if you are wanting that sort of detail.

Ms PENNICUIK — It is just interesting to see that there.

The CHAIR — I have a further question in terms of the government's evidence, both your evidence and the whole-of-government submission. What is the role of Anthony Mithen, an employee of the department, in the preparation of that evidence?

Ms HART — In the preparation of the whole-of-government submission and my statement today?

The CHAIR — Yes.

Ms HART — I think he is one of a number of people in the department who has been involved in drafting parts of the material. My statement today was prepared by me and a few of the senior people who work directly with me. It was not prepared by Mr Mithen.

The CHAIR — Has he been designated to have a coordinating role in terms of this whole-of-government submission and other government material that is provided to the committee?

Ms HART — I would express it not in that way.

The CHAIR — How would you?

Ms HART — Mr Mithen has been coordinating contact across government to ensure that all parts of government are aware of communication from the committee, for example, or the Attorney-General's correspondence. That is his role.

The CHAIR — Is that a recent role? Is this a position as coordinator of government submissions in Treasury and Finance? What is the background to that position?

Mr TEE — I suspect we might have created it.

The CHAIR — I am trying to establish what this role — —

Ms HART — If I can clarify, Mr Mithen does not have a role that is coordinator of government submissions.

The CHAIR — What is his title?

Ms HART — I do not know what his title is; I am sorry.

The CHAIR — He is a lawyer?

Ms HART — Yes, he works in our legal office.

The CHAIR — Is he recently employed?

Ms HART — I do not know the answer to that question.

The CHAIR — Will you take those things on notice?

Mr GIBSON — I am not quite sure — —

The CHAIR — I am trying to establish the process by which government put evidence to this committee, both its whole-of-government submission and indeed your material today. It has come to my information that Mr Mithen has been given a coordinating role. There are things that unsettle me about that, because witnesses to parliamentary committees, in my view, should provide evidence freely and fearlessly. At the same time, my concern is the involvement of Mr Mithen perhaps communicating with other witnesses. I was wanting to establish precisely what his role is, including witnesses potentially outside of government.

Mr GIBSON — A number of questions today have gone to how a government internally organises itself to be able to provide evidence of the calibre that the committee needs.

The CHAIR — Or to subvert the committee's aims.

Mr TEE — There is no evidence or suggestion of that, apart from yourself.

The CHAIR — There is; some has been provided, I think.

Mr TEE — I do not have any.

Mr GIBSON — Obviously, for example, today Ms Hart's evidence has depended on a number of her staff being able to ensure the accuracy of that. As you rightly observe, with respect, Mr Chair, it is necessary to have someone or a number of people within a government department who are able to take a coordinating role in ensuring that all that is pulled together and presented in an appropriate way.

Mr TEE — It is an obvious statement.

The CHAIR — Can you explain then perhaps Mr Mithen's position and his title?

Mr GIBSON — His title, I think, is Lawyer in the Department of Treasury and Finance. He certainly reports to me.

The CHAIR — He is a recent employee?

Mr GIBSON — I am really not sure what his longevity in the department's employment is. He is not a recent employee.

The CHAIR — Thank you. Are there any further questions?

Mr O'DONOHUE — I have one further question. In paragraph 19 on page 6 Ms Hart said:

If Crown land and freehold land-holdings are aggregated, the total value of land and national parks held by the state of Victoria exceeds \$30 billion.

How did you arrive at that figure?

Ms HART — From the annual financial report, 30 June 2007.

Ms PENNICUIK — Somewhere — and I cannot find it; I have been madly trying to find it — in your submission or your evidence it says that the Department of Sustainability and Environment may upon request

provide an assessment of surplus land. I am just trying to work out why it would be on request and why it would not be as a matter of course.

Ms HART — Because some of the surplus land will actually be land that is being managed by the Department of Sustainability and Environment, so they do not, obviously, need to request of themselves to undertake an assessment.

Ms PENNICUIK — So for every other piece of surplus there would be an assessment by DSE?

Ms HART — I do not know the answer to that question because I do not work in DSE. I just think it would be a bit inappropriate for me to say yes for every other piece of land.

Ms PENNICUIK — But you work in the Department of Treasury and Finance —

Ms HART — That is correct.

Ms PENNICUIK — which is looking at the disposal of surplus land, and looking at these diagrams you have got here it would appear to me that you need to get the assessment.

Ms HART — That is correct.

Ms PENNICUIK — So I am asking, is it done in every case except the case where they hold the land?

Ms HART — That is my difficulty. I have been in the role for 12 months, and I can say all the cases I have dealt with, yes. I know, before signing off on behalf of the minister, I actually see that the assessment has been undertaken. I cannot speak for periods of time that I have not been involved in the process.

The CHAIR — Who was the previous person in your position?

Ms HART — The previous person in my position was Peter Carroll, and he has retired from the government.

Ms PENNICUIK — In your experience have there been any that have been assessed and the Department of Sustainability and Environment has advised it is not appropriate to sell the land or the surplus?

Ms HART — I cannot think of an occasion where that has come up, but I think sometimes they might identify that less of the land is appropriate to be sold, a smaller component of the land, because there may be public land values associated with part of it.

Ms PENNICUIK — Okay. So what is the process following that?

Ms HART — Then we would only sell the amount that they identified as government land and the rest would be retained.

The CHAIR — Thank you for appearing. I think there are many matters to follow up, and we will certainly be in touch with the secretary on a number of these matters. We will also contact you with a number of the issues that you have undertaken to provide additional information for the committee on.

Ms HART — Thank you.

The CHAIR — I declare the hearing closed.

Committee adjourned.