

# CORRECTED VERSION

## SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Melbourne — 5 March 2008

### Members

Mr D. Davis

Mr P. Hall

Mr P. Kavanagh

Mr E. O'Donohue

Ms S. Pennicuik

Mr B. Tee

Mr E. Thornley

Chair: Mr D. Davis

Deputy Chair: Mr B. Tee

### Staff

Secretary: Mr R. Willis

Research Officer: Ms C. Williams

### Witnesses

Ms H. Halliday, and

Ms F. Fitzgerald, Esplanade Alliance.

**The CHAIR** — I welcome Helen Halliday and Faith Fitzgerald from the Esplanade Alliance. I ask you to make a brief statement, after which the committee may well have some questions.

**Ms FITZGERALD** — Thank you very much. I have a brief submission, Chair, that I would like to hand over to you for the members of the committee. Thank you for the opportunity. My apologies in advance. I need to go to work, so I have to leave as soon as we have done this; hence the change in order.

I want to make two points, really, only on my submission. I would like to claim that the development as proposed on this site is a lost opportunity. The slice of beachfront of which the St Kilda triangle is part is magic. It is Victoria's most used public land; you heard that from Mr Spokes. It has brilliant vistas, intrinsically valuable landform, and the triangle site is just the last piece in the jigsaw. It is not an isolated site; it is part of the St Kilda foreshore. It needed a bold plan and a vision. Instead we have had a flawed process, short-sighted officials and a state government that might have taken its eye off the ball at the appropriate time, and St Kilda's most precious asset perhaps is to be vandalised. In a city renowned for its sophistication and style — Melbourne — this development is just simply crass. It is without vision, it is prejudicial to public good and without public support. I would also like to argue that the value placed on public land in this state is eroded by the decisions for this site. Of course commercialisation of public land is not new, but the extent of the commercial uses proposed for the triangle and the nature of those uses is unprecedented on such a site. Sadly, we have a new precedent. The people of Victoria were robbed of an asset which should have been protected in all their interests into the future.

I would like to respond on behalf of the Esplanade Alliance to a couple of the points that the CEO of the City of Port Phillip made. Mr Spokes made the absolutely correct point that on public land it is possible to have appropriate commercial activities. I think you have to pay to get into most national parks these days. There are kiosks along the beach, and there are some restaurants on the foreshore and in other places. It is a matter of the extent of the commercialisation, perhaps. It is a matter of degree. What we are arguing is not that there should be no privatisation or no private uses on this land to assist in funding, but that it has gone too far and that those uses are not appropriate.

Mr Spokes also stated that in a public-private partnership — the funding model used here, of course — the public sector needs to retain control. Our argument is that in fact the public sector has lost control. It has gifted one of Victoria's most valuable pieces of land to a commercial developer for his private interests. Mr Spokes also said a 99-year lease is better than freehold. It beats me, that one. If you live in Canberra, a 99-year lease is freehold.

I want to comment also on the community input. Yes, it was extensive. Some of us have been working on this thing for years, as a matter of fact. The result of our community input was a state government policy — the uniform development framework — which is a good document. It is just not being implemented. There was also a reference to the population increase which presumably justifies another shopping centre in St Kilda, but I would remind you that the economic benefit of this development, and the public good benefit such as exist and is being claimed, is seen as being regional, not local. This has got nothing to do with any predictions of increased population in St Kilda.

In my paper I have indulged in one of my pet topics — a little discussion about the value of public good. I will not repeat what I have written here, except to emphasise that in Australia we are lucky. Ever since the days of the colonial governments some of the land has been reserved for public good — around about 40 per cent across the nation. That came from the very first day when the colonial government sent out the surveyors, measured up, alienated some and granted it to freehold — of course the Aborigines had no rights until Mabo — and reserved the rest for public land. The reserve at the end of the street where the playground exists, the national parks and, in much more recent times, nearly all the foreshores, the mountains, the rivers and places of beauty have been public land. The reason for that was a belief that a civil society deserves to have some of its land reserved for the good of all the people. It is possible to measure the economic benefit, and this is done for things like national parks. It is a public good.

What we are arguing is that if you alienate all of that public good to private use, then you have given up. You have given away what was a benefit and what was something that the community as a whole owned. This piece of land has been a combination of Crown land and public reservation until 2006. The Land (St Kilda Triangle) Act 2006 is the first time that that land has been effectively rezoned for a so-called public-purpose first: retail. Retail is not a public purpose; retail is a private purpose in anyone's definition. Therefore it is a sad state of affairs when, as a state

which is proud of its record in public land and in keeping in trust some of our best assets for all the people, there has been a change. There has been a new precedent set by this.

If you look back on Victoria's governments, some of the best public land management planning was done during the 1960s and 70s. The metropolitan parks system was established then. All the work that was done around the, at that stage, sadly failing Yarra River was done then. Places like the Doncaster botanical gardens, coastal management plans, river regeneration programs and the green wedge policies, which the current government plans to protect in its new land release program came from the 1970s. There has been a tendency — this is a bipartisan comment, both governments — to gradually erode those visions. I know cash-strapped governments feel the need to find additional sources of money — we all understand that — but it is going too far. When this proposal was put forward, somebody took his eye off the ball. Somebody forgot about those proud traditions of our very livable city.

At the end of the day what we have for the triangle development is a gifted piece of public asset to a commercial developer for his private interests. As Dr Kate Shaw pointed out recently in the *Age*, the concept of public-private partnerships is seductive. It lures officials and elected representatives in governments to what is seen to be something for free. Well, it is not for free. Like every free lunch, it is not free at all. Governments have lost control, they have given away a public benefit and their responsibility really should have been to protect that benefit. We have lost an opportunity. The uses here are wrong. We do not need another shopping centre. The retrofitted planning, which I think Helen will talk about, is evidence of that. It was not even on the plans as a retail centre under Melbourne 2030, which is a very good plan of course.

**Mr TEE** — Of course.

**Ms FITZGERALD** — This is not sophisticated planning. It shows no foresight. It is not a vision. Let us scrap it. It is a bad use of the PPP model. Let us start again, and let us get a vision for the St Kilda triangle.

**Ms HALLIDAY** — Thanks, Faith. Goodness! That was very passionate, wasn't it.

**Ms FITZGERALD** — Sorry!

**Ms HALLIDAY** — My address, you will have already received a copy of it. I guess the thing that I am going to try to do, because I know that you guys are wanting to go through this reasonably quickly, is to try to just address the areas where I think that I have got something different to say. Maybe I should just say that I was a councillor on the City of Port Phillip in the 1970s, and I have been a trader in Acland Street for the last 20 years, excluding the last two years when I have been retired, so I think I have probably got a reasonable knowledge both of the area and the retail aspects.

Just skipping through, I think Faith has already talked about what is there and what could be there. I think that there are some problems in the way in which the development plan has been dealt with. In particular I think the development plan overlay sets levels of requirements for the site development which should have been part of the specifications for the proposals to be considered rather than the requirements for the development plan itself — in other words, things such as the overall envelopes for building should have been set down at the proposal stage, not at the time when the development plan is being approved. So that is one point. I think also in relation to the triangle site itself, there was a danger when retail was included in that that would open up the opportunity for retail to be considered as a legitimate use without any nexus between it and the planning framework.

What are the consequences? I think there are a number of consequences which were put forward at the meeting of 7 February, and I think they are quite significant. What they basically mean is that a series of proposals are now being put which are never going to be subject to any community view. They include the raising of the level of the Upper Esplanade footpath, the relocation of floor area to the Nolan building and the degree to which the foreshore area can be overshadowed. The floor space which is being sacrificed to optimise improvements to the view-lines are being offset in the Nolan building. We still do not know what this series of new uses are to be and at what level they should be accepted. Three-dimensional building envelopes are still in the process of being established. Site locations and specifications, including caps for the various forms of uses proposed on the site, including retail uses, are still being finalised and will be dealt with 'under direction'.

In order to assist you in that regard I have provided a table at the rear of my presentation. That is in fact the only table that you will find in relation to this, and really what I have done is put together a whole lot of information from minutes of council meetings and officers' reports. So it really is indicative only, but what it does help you do

is understand that the total development, as the chairman has suggested, could be in the vicinity of 111 000 square metres, it could well be a lot more. We do not know, because no caps have been set.

Similarly there is a whole series of new uses, which are also listed, for which no caps have been set, and in some instances minimum caps have been set — which is not really a cap, I guess: tenpin bowling, a minimum of 950 square metres; indoor adventure play, a minimum of 400; dance studio, no fixed area; music tuition, no fixed area; and office areas for leisure and recreation, no fixed areas. All of these are there to offset a whole series of amendments that were made where caps have been set in relation to retail and in relation to restaurants and cafes. So we have got basically what I think is a very inadequate set of propositions.

In addition, David Spokes has mentioned the way in which the council has dealt with this issue in relation to their retail policy and that they have got independent reviews done on each of these aspects. The SGS report was asked for on 13 December, just immediately prior to Christmas, and it was expected to be dealt with on 24 January, so a huge documentation on economic impacts of this development was expected to be provided in a period of three weeks. The fact that SGS did anything at all is probably an indication of the fact that the council has used SGS on many occasions prior to this, so in fact they probably had quite a lot of the material readily available to them.

But if you look at the report that they presented, there are a lot of deficiencies in it. For example, they do not compare like to like. When they look at the development site, SGS looks at about 25 000 square metres of retail space. Then it looks across at Fitzroy Street and instead of looking at Fitzroy Street's retail space, it looks at its total lettable area, which clearly removes from what is strictly called retail all sorts of uses, including such things as restaurants and nightclubs, which are obviously an additional thing which is on the development site. In my view, if you calculate a conservative estimate of the total competitive area in square metres, you would come up with 30 200, and if you included private open space, the area is more like 30 900 square metres of directly competitive space. Mysteriously, in relation to Acland Street they have not given us any figure of lettable area at all. The only lettable area where they have actually broken down the spaces that might be relevant is in relation to Carlisle Street, which is actually outside the area of consideration.

The second area where SGS seems to me to have failed in the way that it has dealt with this matter is that it has failed to use the industry formula for calculating loss. What it has done is used a projection of five years out from the time of completion of the project, and it has also factored in an increase in the usage based on population increase and all the other factors that we have already heard. Apparently the industry average in that regard is supposed to be one year out, because most businesses would be unable to sustain losses of 15 to 30 per cent over a five-year period, so we are really talking about a massive shift in the types of uses that would happen in Acland Street.

I have also already mentioned and gone through the failure to adequately describe and set caps for the various forms of retailing proposed, which is all in that table attached, even though the statutory planner, in writing to the council on 13 December, said that these caps were in the public interest and should be shown and declared. I have asked those questions twice in relation to each of those matters, and their answers to those issues are minuted on 25 February as the answer by the CEO for the City of Port Phillip. There is also a failure to determine the appropriateness of the site for retail development against the requirement of the UDF. That has been clearly discussed, and I think you understand the issue, so I will not go through that.

Finally, there is the issue that the SGS report has interpreted the results to fit the desired outcome. Before the SGS report was requested the council resolution said that they would look at the micro impact of the effect of this development on the shopping centres in the immediately adjoining area, and that was minuted in the answer to questions on the 17 December 2007. In the event I suspect that the outcome did not meet the desired measure, so what they did is, instead of measuring the microeconomic impact, they decided to broaden it, so that it is now determined not in relation to what was going to happen to the local community but what might happen on a statewide level. So basically in summary what SGS said is:

The bulk of the benefits resulting from the triangle site development are likely to be attributed to the Melbourne or Victorian community.

Meanwhile a significant proportion of the costs are likely to be borne by the residents living within a short distance from the triangle site.

And further:

St Kilda provides a unique experience not just for local residents but for users from overseas, interstate and country Victoria as well as Greater Melbourne. With this fact in mind, the community for the social cost-benefit analysis has been defined as the whole of Victoria.

Clearly that was not what was asked for by the council when it asked for this report to be done.

I have also mentioned that there are a series of offsets which have been incorporated and which are listed on the back. They include the tenpin bowling, the indoor adventure playground, the dance studio, music tuition and offices. None of these were made at the request of the community. They have all been made as offsets for various other things that have been factored out of the development. In the final outcome, having come from a proposition of, say, 115 000 square metres of retail and various other space usages, they have reduced it possibly by 5000 square metres. This is after months and months of negotiation with the council and the community. So I believe that there are many questions to be asked in relation to those issues, none of which have really been addressed to date and for which there is a community issue to be addressed.

**The CHAIR** — Can I thank both of you for your contributions. Faith, yours was a very passionate one, and I understand a lot of your points and agree with a great number of them.

Helen, I thank you for this breakdown — and I am not going to ask a question; I just want to make one very short statement about it — because this is extremely helpful for us in getting a handle on what is actually being proposed. It has been very difficult to get a clear picture of what is being proposed — the size of it, the scale of it — and it makes it clear that those earlier figures that I put forward were certainly in the ballpark. I believe the council should have got the process right and put this out in a very clear way. I do not believe it is satisfactory that the community still does not know the full scope of this project.

**Ms HALLIDAY** — Yes, and I think all of these things are notional. Tenpin bowling is just an area. There is nothing to say that that has to be kept as tenpin bowling. If that does not work, it will be changed to something else.

**The CHAIR** — It is very clear to me that this project is yet to be tied down. The community does not know what is going to occur, because council and the developer at this point appear not to have finalised their plans.

**Ms HALLIDAY** — Yes. Just on that last point about Acland Street and the impacts on these other retail shopping centres, there is very little that they have been told about the impact of this. They have got no idea, I do not believe, about what is going to happen. They are thinking it will all be terrific. They have got no capacity to change anything. If the land use cannot be set by the council in cooperation with the development on Crown land, how can it be set with a series of independent landlords, all with their own little shops and little areas and businesses? I think the public interest is in trying to determine the best use of this site, not trying to retrofit what should happen in our local shopping centres.

**Mr TEE** — Thank you for your submissions, and yes, your passion is evident, as is the amount of work and the genuineness of your concerns. This table is helpful too. The question that it reveals for me really is, in dealing with these sorts of proposals, what role should government play, what role should the courts play and what role should the local council play? Really, I suppose the committee's role is to try and provide government with some support or advice in relation to how you deal with these sorts of issues in the community. We, as a committee, obviously do not have the power to direct either the council or the minister to do anything in relation to this proposal or any such — —

**The CHAIR** — We can certainly express a view, though.

**Mr TEE** — We can obviously express a view, but we do not have the power to stop the proposal or direct the council to do anything. It occurs to me that really when you pare it all back — and I constantly get complaints about things being yanked off to the courts, I get complaints about the former Liberal Party approach where the minister took everything in and did a sort of secret deal. I suppose what it comes back to for me is really: shouldn't these decisions be dealt with by the council? They, at the end of the day, are the locally, democratically elected members. They are the closest ones to the community. If they get it wrong, then the community will express that view in the ballot box in November. As I said, we do not have the expertise or the power to make a call on these issues. Who is in the best position? I am just wondering if you have got a view on that.

**Ms FITZGERALD** — I suppose that was really the central thrust of what I wrote, because I do believe that public land management is a state responsibility. I think that far too much control was passed across to a local council, which is very good in many ways but perhaps was out of its depth on this occasion. But, anyway — we believe it made mistakes. Honestly, Mr Tee, it needed public funding. I think it just went under the radar at the point of time when people were thinking about it, and you can see the reaction now. Maybe it is time to rethink it. It is not easy to unpack what has happened, but it is not just a local site; this is a regional asset. It is as regional an asset every bit as much as Albert Park is, every bit as much as the MCG is. It is something that should be being developed on behalf of all the people of Melbourne.

**Ms HALLIDAY** — I would not mind answering that question. It seems to me that, although there is some value in what you say, I think the removal of VCAT appeal rights is fundamental; it has been expressed and I think we all now realise that that was a big mistake. I think the nexus between allowing these sorts of uses and the planning process should be clearer and more strategic. But I also think that when there is a proposal to put a major shopping centre, probably what would be described as a principal shopping centre, onto a Crown land site, there is an interest by the government; it should have some say about that. It is not something that should be dealt with by those in the local community, no matter how well intentioned and no matter how in touch with their local communities they might be. I noticed that whenever this issue comes up, people always say, 'We can't give money to the Palais because we've got to give money to education and hospitals'. We all know that you guys give money to everybody all over the place, so \$25 million for the Palais, which is regarded as something which is precious in our history and which maybe for good or worse cannot be raised locally, seems to me to be a valid thing to ask the state government to make a contribution to.

**Mr TEE** — Thanks for that. Yes, I think it is important that we as a committee try to extract from experiences like these the lessons for a way forward. Thanks for that answer.

**Mr THORNLEY** — I thank you for your work — the table is particularly helpful — and I am thankful for the contribution that you and others here are making to these discussions. I have a couple of questions.

Firstly, on the point that Brian was trying to explore: I suppose it is a bit of a role reversal, to be honest, for me. I am usually approached by people who are very upset that things have been taken away from them — like that control has been put in the hands of authorities further away, including the government that I am part of. Part of the reason for that is the government often then makes a wider set of considerations about the economy and a range of other things that local people would prefer not to be considered when development proposals are being looked at.

By the sounds of it, even the SGS report that you outlined is an example of that, where it said that most of the benefits fall to people outside the local area. So trying to move the locus of decision from a group that is accountable to the local area and whose primary responsibility is to take into account the needs of the local area and the residents who vote for it into the hands of a forum which has an obligation to take into account a wider set of interests does not naturally look like something that would be advantageous to the cause. There is a bit of 'be careful what you wish for' in these things, I suppose.

**Ms HALLIDAY** — I think we know that.

**Mr THORNLEY** — I am trying to make sure I understand how you think about that. Obviously this issue is prime in mind, but these things will set precedents for other areas, and I can imagine an opposite situation where people then turn around three weeks, three months or three years later and say, 'Well, hang on, the St Kilda triangle went to the state government, why shouldn't it happen?'. I am trying to get the policy, I suppose. This committee is trying to redirect its energies a little away from grievance politics and a bit more towards sort of long-term subsidy policy recommendations to government. Before we hare off down this path I want to get a sense of your thoughts on the set of issues there.

**Ms FITZGERALD** — It seems to me that one of the problems in logic in this is that not originally but now it has got to this point people are seeing it as a straightforward development proposal on land that is appropriate for the development. There is always going to be a complaint about a shopping centre that looks too good. This is not about two or three too many shops — Sportsgirl versus Bunnings. In fact, the shops will be chosen by Woolworths, because that will be the terms on which the Safeway is put there — not by anyone else, and they have nothing to do with the UDF requirements. To my mind, this is not just a local issue. Nobody wants 4000 more nightclub seats, pubs et cetera — that turns into 12 000 on a good night, I am told. Nobody wants that around

the streets. We have enough of that in St Kilda. I am even setting that aside and saying that this was a piece of land that belonged to the state that was so precious and in such a fabulous location and had such a history of the European urban seascape that it needed to be seen as more than just your usual local slot. It needed to be developed as public land, not as a place where somebody could come along and put in a proposal and, 'Let's see how it plays'.

**Mr THORNLEY** — Thank you; that is a good and helpful response. Just one more question because I know everyone has a lot of questions. The issue of alcohol is one that is very concerning to a lot of people, not just here but around the country. I am just trying to get the feel for the views of the residents and the activists. Live music has been one of the good things about St Kilda. I am not a nightclub kind of guy, but the live music works for me, and I think that is true for many other people here. I keep hearing different stories about what types of venues will actually be in this thing. I want to make sure I understand your views about it — is live music good, are nightclubs bad? How do you try to characterise what would be the good types of entertainment precinct versus just nightclubs?

**Ms HALLIDAY** — I think it is instructive about the change in language. Originally it was called nightclubs and then a couple of months ago it started to be called dance venues and music venues. So the language about what is actually happening there has changed in relation to the public profile about what is happening in nightclubs. I think there is that part to it. I think there will be a lot of areas in this site that will be licensed. Almost all the restaurants will be licensed, all the nightclubs will be licensed and the taverns will be licensed. There will be internal space; the external space is still to be determined. So a hell of a lot of drinking will be able to be going on there. I think there is a legitimate concern by the community about that. I must say that in the beginning I did not put the same weight on it, but in light of everything that has happened since then I have to start thinking.

We have asked the developer about this particular thing, and he explained to us that it was all going to be all right because he had 'gone back to the cops' and spoken to them and they said that because he had a containment model — that is, everybody would be in one area — that would deal with the issue. So I asked, 'What proof do you have that a containment model works any better than a dispersal model?', and he said, 'None'. That is the crucial question. If you do not have a model that is working, how can you categorically say that it will work in this location?

Finally, I wrote one paragraph which I did not say anything about. When I was on council in the 1970s we spent \$1 million getting rid of Bojangles. It took us 20 years before we got even remotely near a new development for that site. To have found a disappointing outcome to that makes you wonder about any processes, really. What I am saying is that these places at that stage were attracting all sorts of people — people were being killed in the car park and so forth. Is it an appropriate use for Crown land?

**Mr THORNLEY** — Can I just make sure we get this on the record: what do you think is the best use for this site? I want to make sure that we are clear about that.

**Ms FITZGERALD** — I had a very tight paragraph towards the end, which says that you could have redone the Palais. I actually do think — sorry, Sue — that you probably do need to add some space at the back, because apparently at the moment there are no dressing rooms. I think you could have fixed up the Palais et cetera; I think you could have got a small hotel on the place; I think you could have got on some cafes and restaurants and a lot more space that was available to the public for free, not just laneways. It could have been done; it is just a matter of a much smaller scale. We do not want a regional shopping centre, and we do not want the additional 4000 seats for just a 900 person tavern and large nightclubs. They are the scale of venue that we are told does attract that particular level of usage that Melbourne is really struggling with at the moment.

**Ms PENNICUIK** — I do not have a question but I thank you for the information you have put forward. I will just clarify that I do agree that there needs to be some work done on the back of the Palais in terms of access to the dressing rooms, which is a little bit different from what is proposed at the moment which is the Nolan Building and the hotel et cetera attached to the Palais. Would you agree, given your vision you have just outlined — which is pretty well what I share and I think most people in the community who engage with this issue share — that that could have been achieved if the state government, as well as handing the whole site over to the council to manage, had given it the resources with which to do that in terms of money to refurbish the Palais and some other parts of the site? Then we would not have been presented with the development we have now or we would be less likely to have been.

**Ms FITZGERALD** — It would seem so.

**Mr O'DONOHUE** — Thank you both for your evidence this morning, and I agree with some of the comments you made particularly about the vision of governments in the 1960s and 1970s in relation to planning and open space and the green wedges. I want to pick up a comment in relation to the police. You said that the developer had had discussions with the police. Have there been broader discussions with the police? I am concerned that police are stretched as it is, and these proposed taverns and drinking establishments will put additional pressure on already scarce resources. If they are to proceed as proposed, there will need to be additional police resources in St Kilda.

**Ms HALLIDAY** — To be quite honest I was shocked that they had not done so before. That was the only comment they made. There has been no written report. I have no idea who he spoke to. It could have been that he just went down to the local police — —

**Ms FITZGERALD** — There is a committee though— —

**Ms HALLIDAY** — There is a committee in relation to Victoria Street, but I do not know whether that is who they would have gone to.

**Ms FITZGERALD** — I am sorry, Helen, it was when you were in Tasmania — on 7 February at the monthly meeting the resolution was passed. It was announced by the council. The mayor informed us that Christine Nixon had agreed to set up a committee. This proves that you do not put something in place which you know in advance is going to generate so many problems that you need additional police.

**Ms HALLIDAY** — That is to deal with the problem once you have got it. It is not to deal with whether it is a good thing to do in the first instance.

**Mr O'DONOHUE** — Absolutely. I suppose it is an issue of concern if it does proceed as proposed?

**Ms HALLIDAY** — Exactly. Yes.

**Mr KAVANAGH** — I do not have any questions. I would like to thank you for your evidence.

**The CHAIR** — Thank you very much.

**Ms FITZGERALD** — Thank you for the opportunity.

**Witnesses withdrew.**