

# CORRECTED VERSION

## SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

East Kew — 26 September 2007

### Members

Mr D. Davis

Mr P. Hall

Mr P. Kavanagh

Mr E. O'Donohue

Ms S. Pennicuik

Mr B. Tee

Mr M. Viney

Chair: Mr D. Davis

Deputy Chair: Mr B. Tee

### Staff

Secretary: Mr R. Willis

Research Officer: Ms C. Williams

### Witnesses

Cr P. Healey, mayor,

Mr P. Storer, acting chief executive officer, and

Mr T. Harrington, acting manager, strategic planning, City of Boroondara.

**The CHAIR** — I again declare open the public hearing of the Legislative Council Select Committee on Public Land Development. Today's hearings are in relation to the inquiry into the sale or alienation of public land for development, the sale or alienation of public open space for the purpose of private development, and the sale and development of public land and the relationship to the Melbourne 2030 policy and green wedges. I welcome the City of Boroondara representatives: the mayor, Cr Phillip Healey, the acting CEO, Phillip Storer, and the acting manager, Tom Harrington. I indicate that 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. Would the three of you care to make any opening comments before we move to questions?

**Cr HEALEY** — No, Chair. I think we will just move to our presentation.

**The CHAIR** — Okay.

**Cr HEALEY** — I thank you, Chair, and members of the select committee for the opportunity to make a presentation to this committee. I am presenting today on behalf of the City of Boroondara, which welcomes the establishment of the select committee inquiry into the sale and development of public land. We also welcome the opportunity to make a formal written submission, and appreciate the chance to present to the committee in relation to the Kew Residential Services site today.

Firstly, council wishes to emphasise that public land is a community asset and the state government of the day is a custodian on behalf of the community. In many cases communities retain strong links to these assets and require them for ongoing community purposes. These include meeting local needs for open space and community facility provision. We believe there is a need for this committee to investigate the opportunities that will increase local government involvement in decisions about public land assets. In particular we believe more flexible arrangements to transfer land between state and local government are required where the asset continues to be needed for an ongoing community purpose. It is particularly inappropriate that councils are required to pay market value, as assessed by the Valuer-General, to retain community assets for community purposes.

Council has prepared a more detailed written submission to the committee with specific reference to four sites within Boroondara. They are the Kew Residential Services site, the former Hawthorn police station, Camberwell railway station and the former Kew police station and courthouse. I understand that the focus of today's public hearing is on the Kew Residential Services site, and that will be the focus of our presentation.

To begin, I will outline the background to the redevelopment of the Kew Residential Services site which was announced by former Premier Bracks in May 2001 to facilitate the deinstitutionalisation of residents. While the site is now an important location for new residential development within Boroondara, there are several site issues that must be carefully considered in relation to its development. These include the distance from the Kew Junction activity centre, limited public transport access, site topography, landscape elements including significant exotic and native vegetation, identified cultural heritage features, and its proximity to the Willsmere complex and Yarra Bend Park.

The KRS site is now located in a residential 1 zone with a development overlay — a DPO. Parts of the site are within a heritage overlay and a vegetation protection overlay. The development of the KRS site could result in a maximum of 520 new dwellings being built in the next seven to eight years. This may be reduced if Walker Corporation develops to the current market projection of only 340 dwellings. The construction of stage 1 commenced in 2006, with 74 lots developed at the eastern — Princess Street — edge of the site. This stage includes construction of 20 community residential units for former residents of Kew Cottages.

A summary of milestones in the KRS site and of the planning process: the KRS site has a rich history and I will briefly outline its planning history before focusing on those matters that council considers most relevant to the committee's inquiry. There has been a preparation by council of an urban design framework, and I would remind the committee that the city of Boroondara did not oppose the sale of the KRS site, but it has sought to achieve an appropriate planning framework to manage the site's development. In late 2001 council decided to prepare an urban design framework, a UDF, to guide the redevelopment of this significant 27-hectare site. The KRS UDF was prepared by a working group, which included representatives of state government agencies, over a 17-month

period. A preparation of background technical reports and stakeholder consultations occurred as part of the UDF's development.

In August 2003 council adopted the working group UDF with some modifications. Some of the key parameters of the adopted UDF were: open space — at least 50 per cent of the land was required to be provided as public open space; building location and height — the UDF identified areas where buildings could be located and appropriate height levels; protection of assets — including canopy trees, heritage buildings and other items of cultural and heritage significance; traffic — development on site limited by the capacity of the site and surrounding area.

There was preparation of an alternative government UDF. On 17 October 2003 the then Minister for Community Services released an alternative UDF prepared by state government. It should be pointed out that this document contained significant departures from the UDF that was developed by the working group and adopted by council. Of great concern was that there was no consultation with this local government or this community on the content of the UDF.

Then we have planning scheme amendment C38. In late October 2003 council commenced exhibition of a planning scheme amendment to rezone the KRS site from public-use zone to residential 1 zone. The amendment also sought to apply a design and development overlay to implement the council-adopted UDF. Our process allowed for public submission and would have allowed for review by an independent panel. Amendment C38 reflected the vision of council's UDF. Then we have planning scheme amendment C53. On 12 November 2003 the Minister for Planning introduced amendment C53 to the Boroondara planning scheme. The effect of this amendment was to make council's amendment C38 redundant. Amendment C53 was approved without any consultation with the council or this local community.

The key features of the Minister for Planning's amendment C53 were: to rezone the land residential 1 and to introduce a development plan overlay, a heritage overlay and a vegetation protection overlay; to include reference to the state government UDF; to require that a development plan be prepared generally in accordance with the state government UDF; to make the Minister for Planning the responsible authority for the site, so that it would be the minister who would approve the subsequent development plan and permit applications; to allow council 28 days to comment on the development plan; to deny opportunity for community input; to remove usual notice provisions relating to permit applications; and to deny opportunity for review of decisions by VCAT.

The Walker development plan and subsequent permits then came into play. The first Walker development plan for the redevelopment of the KRS site was lodged with council in June 2005. Due to an insufficient level of detail provided, council was unable to provide meaningful comment on the plan. Council then commenced VCAT declaration proceedings in June 2005 to ensure that the information in the development plan met the requirements of the minister's planning scheme amendment. Council later withdrew this action when a more satisfactory development plan was lodged in December 2005. The Walker development plan was approved by the Minister for Planning in March 2006, following a further change to the planning scheme — amendment C65 — which removed height limitations introduced by the minister's amendment C53.

Changes in the approved development plan that were strongly advocated for by council included increased public open space to 30 per cent of the site; a reduction in the number of dwellings on the site to a maximum of 520; a commitment to the retention of significant vegetation; and the protection of the significant views and vistas. The entire KRS site was formally included on the Victorian Heritage Register on 1 December 2004 and Heritage Victoria issued a permit for stage 1 of the development in April 2006.

Subsequent to the approval of the Walker development plan and the issue of the Heritage Victoria permit, the Minister for Planning issued permits allowing for the development of stage 1. These included a permit for subdivision of the site and a permit for the construction of dwellings on lots less than 500 square metres in the area. Council also certified the plan of subdivision under the Subdivision Act as complying with the planning permit issued by the Minister for Planning.

Now I will detail some key matters for the consideration of the committee. Council believes that the planning process used for the KRS site imposed a development outcome on the community. Quite simply, the planning arrangements did not allow for the proper input by the City of Boroondara and did not allow for any public scrutiny of the proposed KRS development. The state government chose to make itself development facilitator, planning

authority, responsible authority and financial beneficiary of the site — leaving the council in a most curious predicament.

There are several key matters that council believes should be considered by the committee, including: the replacement of council's urban design framework; the removal of the ability for council to control and manage the future development of the site through amendment C53; the fact that planning scheme requirements provide insufficient certainty of a development outcome and do not adequately protect significant site assets; the fact that there is no opportunity for community input into the planning scheme amendment, development plan, or permit applications and the opportunity for review of any subsequent decisions by VCAT was also removed; the ongoing management of the site's development; the failure to secure improvements to community infrastructure and failure to properly assess the social impacts of future development; and a lack of transparency in state government dealings with the Walker Corporation.

I will now provide greater detail on each of these issues. On replacement of council's urban design framework, the state government UDF differed from the council-adopted UDF in several critical areas.

(a) open space: the council working group's position on open space ensured its generous provision on the site. Council's adopted UDF sought that 50 per cent of the site be retained as open space, whilst the state government UDF required that only 27 per cent of the site be retained as open space. Council, in preparing and adopting its UDF, recognised that the KRS site made a significant contribution to open space in this part of the municipality. Whilst the site was used by DHS, members of the community could readily access the open space on the site. The site also made a strong visual contribution, with built form sited within a parkland-landscaped setting. Open space on the site was also recognised as important in the context of the site's proximity to Yarra Bend Park. The open space proposed by the Walker development plan is largely privatised, with a significant portion of the open space located along a central spine directly abutting residential properties. This is disappointing, as it is council's view that the site offers opportunities to provide open space in a more natural setting, and that a greater emphasis should have been given to retaining the parkland quality of the landscape setting.

(b) the development yield and built form: the state government UDF allowed for about 400 more dwellings than the UDF adopted by council and overall provided for a total of some 800 dwellings on the site. The state government UDF also increased the building height on the most elevated part of the site from three to five storeys, and reduced building setbacks from the adjoining Kew Gardens estate.

(c) traffic and access: a further concern with the state government UDF is the reliance on the hazardous five-way Princess Street roundabout as the preferred form of access to the site. The council-adopted UDF sought safer primary access to the site via Hutchison Drive.

On the removal of the ability for council to control and manage the future development of the site through amendment C53, amendment C53 made the Minister for Planning the responsible authority for the site. Council's formal planning role was limited to commenting on the development plan for the site within a period of 28 days. Council was inappropriately removed from making decisions about the planning of this key site.

There were several other deficiencies with the minister's planning framework. For example, the 28-day time period for council comment was inadequate for both assessment and community consultation; council had no formal ability to require further information; once council provided comment on the development plan there was no mechanism binding the Minister for Planning to respond to council's comments or demonstrate how they would be addressed; council and its community were denied any formal role in relation to the assessment of permit applications and plans that followed the approval of the development plan; there is no requirement for council to be informed of decisions made by the Minister for Planning as responsible authority for the site; and council's ability to enforce compliance with the planning scheme is diminished, as council is not the responsible authority and therefore cannot take enforcement proceedings before VCAT.

Planning scheme requirements provide insufficient certainty of a development outcome and do not adequately protect significant site assets. Amendment C53 failed to provide sufficient certainty concerning the planned development outcome for the site. Requirements of the development plan overlay were written generally and did not provide sufficient certainty on the planning outcome for the site. They provided excessive flexibility to the Walker Corporation in its preparation of the site's development plan. There were no requirements for the developer to contribute to on or off-site infrastructure that was not associated with current KRS residents, i.e., upgrades to

roads, local schools, kindergartens and child-care. Council insisted — and it took three attempts — that the Walker development plan provide the necessary information to meet the requirements of the development plan overlay and other scheme requirements.

The approved Walker development plan establishes a target of 30 per cent open space provision, but it is still not yet demonstrated how this target will be met in and what form the open space will take. The approved Walker development plan does not include definitive commitments. It provides for a maximum of 520 dwellings but does not define lot numbers or dwelling mix, and it includes statements on tree protection but does not show the location of trees that need to be protected. Senior departmental officers have agreed that not all significant trees were included in the vegetation protection overlay, but to date there has been no action to correct this.

There has been no opportunity for community input into the planning scheme amendment, development plan or permit applications. The opportunity for review of any subsequent decisions by VCAT was removed. Council sought to provide the opportunity for community review of the development plan during the specified 28-day time frame. However, this is not considered adequate community engagement for such a large development proposal on a key strategic site. The planning framework introduced by the Minister for Planning also removed the opportunity for review of decisions on the development plan and subsequent permit applications by VCAT.

Ongoing management of the site's development: a key issue on the management of the site's development was a failure by the Department of Planning and Community Development, formerly the DSE, to work in partnership with council. From council's perspective the arrangements made for the redevelopment of the KRS site compromised council's ability to achieve the best possible planning outcome for the community. There is an inherent tension between the state government's development facilitation role and its roles as the planning and responsible authority. There are also limitations on council's ability to intervene — for example, some vegetation management issues have arisen.

(a) the removal of a significant Bishop pine tree, *pinus muricata*: in June 2006 a Bishop pine, included on the National Trust Register of Significant Trees, was removed due to infection with *phytophthora cinnamomi*, a soil-borne disease. Steps to treat the disease and contain its spread through hygiene management procedures and associated works were not implemented as a high priority by Walker Corporation or the DPCD. Council obtained special arborist advice and evidence of careless work practices after the presence of the disease was identified.

(b) the removal of the yellow box tree no. 658: whilst this tree was not included in the VPO, it was assessed by a council consultant, Dr Graeme Lorimer, as being of biological significance and a rare species linked to remnant vegetation on the site and Yarra Bend Park. Council wrote to the DPCD on 27 October 2006 requesting that the planning scheme be amended to protect the tree. No written response was provided by the department. On 2 March 2007 council officers were advised by email that the tree had been removed.

(c) breach of arboricultural management plan and Walker development plan: on 25 January 2007, DPCD, Heritage Victoria and Walker Corporation were notified by council that the tree protection fencing had been moved and earthworks had been undertaken within tree protection zones. In council's view the works posed a serious threat to the long-term health of remnant vegetation on this site. The vegetation was protected under the VPO and was required to be retained and protected as a condition of the permit issued by Heritage Victoria. Council met with representatives of the DPCD onsite on 12 February 2007 and wrote to the department on 16 March 2007. Council was informed on both occasions that the DPCD was investigating the matter. Whilst tree protection fencing was subsequently reinstated, there has to date been no prosecution of earthworks breaches or enforcement action under the Planning and Environment Act by the Minister for Planning as the responsible authority.

Failure to secure improvements to community infrastructure and properly assess the social impacts: the minister's planning scheme amendment, amendment C53, did not include any formal requirements to provide community facilities or any financial contribution for community facilities. There has also been no social impact assessment undertaken on the development. The people who choose to live at the redeveloped KRS site will not live in isolation from the established residential community. There must be greater consideration of the likely impacts on community service provision, including the demand for child-care places, impacts on kindergarten and school enrolments, improved public transport provision for this new residential community and the appropriate level of contribution that should be made by the government and the developer towards community service provision. The state government continues to focus community benefit outcomes on the deinstitutionalisation of the former residents of Kew Cottages. Council does not dispute this need but does seek to bring to the attention of the

committee the broader community infrastructure needs and the absence of any formal requirement for the developer contributions.

Lack of transparency in state government dealings with Walker Corporation: there has been no disclosure of the actual agreement between the Walker Corporation and the state government or of the financial arrangements relating to the sale and development of the land. In a press release dated 4 May 2001 former Premier Bracks said:

A new residential subdivision will be built as part of the development and up to 250 new homes will be built and sold to the general community.

In a press release dated 3 June 2005 the former Minister for Community Services, Sherryl Garbutt, provided the following comments:

The new housing development on the KRS site is low density and will provide around 520 houses and apartments — with the majority of accommodation single or two storeys only.

It is estimated that the government will receive around \$80 million from the ... sale and ... residential development. The final commercial proposal will be independently valued by the Valuer-General.

This major redevelopment will provide 20 houses for 100 residents with intellectual disabilities on the KRS site. Another 73 houses are being built for 380 people with intellectual disabilities in the wider community ...

Every cent raised from the redevelopment will go towards providing high-quality housing and support services for KRS residents and other people with a disability in the community.

People with disabilities in particular will benefit from a new \$3 million community leisure centre ...

The committee is invited to note the inconsistency in the dwelling numbers between the two press releases, bearing in mind the uncertainty in the community about the site's development.

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

To conclude, this presentation has highlighted a number of council issues for the state government's development and management of the KRS site. Despite council not having the ability to make planning decisions relating to the KRS site, a constructive working relationship between council and Walker Corporation has achieved some positive site outcomes. Council's more detailed written submission to the committee's inquiry will seek that there be substantial policy reform in relation to management of public land, processes for determining whether such assets should be made available for sale, arrangements relating to the sale process and the relationship between state government land and policy implementation.

In summary, it is submitted that public land should be regarded as a community asset to be held in public ownership for the long term whilst it is needed for community purposes. There should be an opportunity for greater local government and community input prior to any decision to declare public land surplus to state government requirements and prior to the decision to sell land. These decision processes are currently internal to the state government. Proper notice should be provided to local government of an intention to dispose of properties. Local government should not be financially disadvantaged by having to purchase community assets at market value where it can be demonstrated that a public asset will continue to be used in the interests of the community. More flexible arrangements are required to transfer land between the state and local government, especially where an alternative community-based use is proposed.

State government should take a whole-of-government approach to management of assets and there should be a greater emphasis on ensuring policy outcomes consistent with Melbourne 2030. There are opportunities for the state government to ensure that development outcomes for other sites in Boroondara could demonstrate the benefits of Melbourne 2030 in a positive way. For example, the former Hawthorn police station site could have been redeveloped to ensure provision of social housing in its final outcome in the Glenferrie activity centre, and the Camberwell railway station site could be developed for an open space and community facility, including the provision of a library, to demonstrate good urban design and livability outcomes sought by Melbourne 2030, which are to date unseen, and we could create a new heart for Camberwell by such a plaza.

There is a need to ensure that the local government retains planning control for the development approvals process in instances where public land is sold for development. There is also a need to provide opportunities for public input into development proposals and to retain the usual opportunities for the review of decisions where public land is developed. Twenty-eight days is not enough for us to parcel it up, get it out to the community in a form they understand and then get that feedback back and create a position to give back to the government.

There is a need to ensure that, where surplus land is developed, proper consideration is given to imposing developer contributions and social planning implications of development, including required community services and improvements to public transport, and there needs to be a greater level of transparency concerning state government's disposal of land and arrangements with developers of such land. This will assist in the proper evaluation of public benefit.

Lastly, I thank the select committee for its time and opportunity to present today, and the three of us are here to answer questions.

**The CHAIR** — I would like to thank you, mayor, for your very comprehensive contribution here. I think it is very useful for the committee to have a time line and summary of many of these issues. I draw your attention to the agreement between Walker and the state government. I think the actual tender is on the site, although your essential point about the full financial arrangements I think may well stand.

**Cr HEALEY** — Thank you, Chair.

**The CHAIR** — But my question is — and to the three of you, as you see fit — about the open space issue and the council's open space policy. Boroondara, as I understand it, has a policy on open space. How would that 27-hectare site, with its vegetation and its need to accommodate the long-term residents there, have been able to be incorporated into the council's open space plans for the municipality?

**Mr STORER** — I think it is worth mentioning that the council's open space policy did not specifically identify this site as being critical to the actual open space provision in the city. I believe one of the reasons for that is that when the policy was developed in 1996 essentially the site sat very much as public open space. It was not public in the sense that it was occupied by DHS, but it was public in terms of the way it was actually used — that is, that the community could and did walk onto the site and avail themselves of the opportunity to enjoy the space not taken up by those who were actually using the Kew Cottages site. In addition to that, the site itself of course formed a very important part of the visual open space of the city because it was developed to a very low density and it is of such a large scale.

I think it is worth making the point that council made a very conscious decision when dealing with the KRS UDF to increase the amount of open space required on this site to 50 per cent, and it did so quite deliberately with the view that it was getting quite strong community pressure for the need for additional public open space in this area. There had been quite a bit of redevelopment taking place in this Kew area with higher density developments, and council took the view that if development were to occur on this site it should do so on the basis that at least half of the site remained public open space, so I think that is the best indicator as to how the site was seen by council at the time.

**The CHAIR** — And that would apply on a similar site in the future? If there was a large chunk like that, you would look to add to the stock of public open space?

**Mr STORER** — Certainly council is always keen to identify opportunities for additional public open space. Boroondara has been identified as one of those areas under Melbourne 2030 where the government is seeking to encourage higher density development. We are a fully established city and that basically means we are constantly struggling with the amount of open space required to meet the needs of a growing population.

**Mr TEE** — Thank you for that historical oversight. I just want to get a bit of clarification about the circumstances in which, I suppose, the government got involved in November 2003. As I understand it, that involvement followed some criticism about the council and the fact that we had been down a process for about 18 months and there had been no progress in terms of the issue, and that criticism, I understand from a press release, included criticism from the local member, Mr McIntosh, who said that while he supports the proposal, he was concerned that the government appears to have made no substantial progress. I suppose the impression I am

getting from all of that is that there was a criticism, including from the local member, about progress by the council, and for that reason the government stepped in. I am wondering if you have any response to that?

**Mr STORER** — Perhaps we should distinguish between the comments made by Mr McIntosh and those made in the media on behalf of the government. Mr McIntosh was actually referring to the government, not to council, and I think that is an important distinction.

**Mr TEE** — I understand that.

**Mr STORER** — So I think we should put that aside.

**Mr TEE** — That is right, although Mr McIntosh was critical of the lack of progress. He blamed government, so government stepped in.

**Mr STORER** — Yes. I think to be fair, the comment made by the government in the press release is a reflection of an attempt to justify intervention in circumstances where, under the legislation — that is, the Planning and Environment Act — council is the default responsible and planning authority for this site. We had a circumstance where there were state government representatives actually participating in the preparation of council's urban design framework throughout that whole process, and at no stage did any member of the state government's bureaucracy participating in any of that process express concerns about the time being taken to get to a high quality response. We were somewhat surprised that those comments were being made in the media, and from our perspective they were no more than an attempt to justify an intervention in circumstances where it would otherwise not be justifiable.

**Mr HALL** — Thank you for your presentation and background; we appreciate it. There are a couple of questions that I have to ask. The first is on the more general point about the transfer of land between state and local government. In your submission you made some comments about the fact there needs to be more flexible arrangements required when there is a transfer of land between the two levels of government where there is a public purpose for that land. Are there instances within Boroondara city where council has actually been required to purchase public land at Valuer-General's price for the purposes of providing a public facility for your ratepayers?

**Cr HEALEY** — Kew courthouse is an example which was ultimately provided at some discount, but the concept was that if the community wanted to retain the use of this site it had to buy it. It is a curious notion that the people of Victoria have to buy property from the people of Victoria when that asset is fixed in the ground in the community, and it has been used by this community. That is an example. Some other examples we are looking at include the Camberwell railway station site. We would like to see that transferred to the community and not just developed and sold for money because we need a heart for Camberwell — —

**The CHAIR** — A portion of the site?

**Cr HEALEY** — A portion of the site, yes, and it is a portion of the site that we are interested in retaining an interest in and creating a new heart for Camberwell. We invited the state government to join with us to create a showcase for Melbourne 2030, one that does not exist because all we have had under Melbourne 2030 is of course the development of the intensification outcomes. We have not had the good side of Melbourne 2030 which is about hearts, open space, community wellbeing and those sorts of things. If you have got a further question I am sure Mr Storer could add to that.

**Mr HALL** — No, that is fine. You have given a couple of examples. Do you classify open space as a community-based use — for example, this particular development — the KRS development — where there will be open space? I suppose a further question in relation to that is whether council is expected to pick up the maintenance of the public open space, do you know?

**Mr STORER** — Yes. To answer your second question first, the expectation would be that council will take over responsibility for maintaining the open space provided on that site in addition to the maintenance of the other infrastructure — roads, drains and so on. It does raise a serious issue for council because this project has been designed so that there are quite expensive homes directly abutting and looking over the central spine of open space. The consequence of that is that in order to properly market the project that open space will have to be developed and therefore maintained to a very high standard — indeed probably a higher standard that might well be applied to most of the city's parks and gardens.

There is a question here for council as to whether or not it can or will take on that responsibility without seeking some ongoing compensation. That is yet to be resolved. We do regard public open space as a community use, and indeed if you take a site like this which has had such a large amount of the land undeveloped and accessible to the community for a very long period of time, that does make a contribution to the community and of course that will never be regained as a consequence of this project.

**Mr HALL** — Just quickly, I noticed planning scheme amendments C38, C53 and C 65 mentioned in your submission. Was council aware that the state government was preparing planning scheme amendment C53 at the same time as you were preparing C38?

**Mr STORER** — No. Indeed the state government's amendment was very much a response to the council's proposed amendment. The planning process requires that the council needs to obtain the support of the minister to be able to exhibit an amendment, and when that request was made to the minister it clearly alerted the minister to the council's expectations regarding the development of this site. I believe that the consequence of that process was that the government felt the need to develop its own amendment to address what it saw as constraints or deficiencies in the council's proposal particularly given that council's proposal was potentially going to result in a much lower yield for this site and therefore a lower return to the government, because if you are setting aside 50 per cent of the site for public open space you have clearly got less developable land and you are going to get a lesser yield or lesser return. But this is the point we make in the submission: that the government put itself in a position where it had a financial interest in the outcome, and in our view that financial interest compromised an objective assessment of the future development of this site by the state government.

**Mr HALL** — My last quick question is: further on planning scheme amendment C53, on page 9 of your submission you made some comment about the deficiencies with the minister's planning framework as outlined in planning scheme amendment C53. Were some of the conditions that the minister imposed upon council within that planning scheme amendment C53 unusual to this particular planning scheme amendment, or are they common deficiencies you would describe in most planning scheme amendments?

**Mr STORER** — No. First of all, the whole process of the Minister for Planning taking over responsibility for a site in a local area is in itself not common, and this government will make the point that it is far less common since it has been in government than was the case with the prior government. So in itself the occurrence of a ministerial call-in, if you like, is not that common. The second thing is that for the government to set up a 28-day response period for the local government of the area is also not all that common. I have seen it before, but it is not all that common, particularly at a site as complex and large scale as this one where, to properly form a view, the local government of the area needs to make inquiries and should discharge its responsibilities by consulting within its community, to be able to inform itself and then make a decision. To try to both analyse a complex proposal and consult with your community, get their feedback to make a decision in 28 days, is almost impossible to do, or to do in any genuine way. That is why we remain very concerned about that type of limitation.

**Ms PENNICUIK** — Just a couple of questions. Thanks for your presentation. One was to clarify the rezoning of the land from public use zone to residential zone 1. Can you clarify how that came about?

**Mr STORER** — That is a fairly standard process when you have land which has been converted from a past use — in this case a public use because it was government-owned land — to a new use. To accommodate a private residential development, you would rezone it in the same zoning as most residential zones applicable to the city of Boroondara, so that is a residential 1 zone. That is a fairly standard approach to the zoning of the site.

**Ms PENNICUIK** — I suppose what I am asking is: was that after the site was sold?

**Mr STORER** — No, it was indeed to facilitate the sale of the site.

**Ms PENNICUIK** — Can you clarify the statement on page 10 — and I think it is somewhere else as well — that says that planning scheme requirements provide insufficient certainty of a development outcome and do not adequately protect significant site assets. Can you just expand on that a bit?

**Mr STORER** — Yes, the issue we are addressing there — and let us take the vegetation probably as the best example of that — we have a situation where even senior bureaucrats from the department admit that there are trees shown as standing on this site which are not shown on the plan being relied upon for the development of this site. They have just been left off. We have raised specific concerns about that, because how can one adequately

protect significant vegetation if it is not even shown on the plans that are being used as the basis for the development? Despite having raised those things, no changes have been made to any of the design or planning documents that are being endorsed to guide development on this site. So that is the sort of limitation, if you like, that we are referring to with the adequacy of the current situation.

**Ms PENNICUIK** — Just to clarify, are you saying that the requirements do not allow for enough detail?

**Mr STORER** — Exactly, that is right. We do not even know at this point how the rest of this site is going to be developed. We are yet to see the staging plans. For that reason we do not know whether we will end up with 250 dwellings or 340 dwellings, or even more. It is quite feasible that if the apartment market were to pick up again, this developer may wish to go back and revisit the total numbers of dwellings erected on this site. One of the clear reasons for the change and the reduction in numbers was that the apartment market slowed quite dramatically and the developer felt they would not have a saleable product if they put too many apartments on the land.

**Mr KAVANAGH** — Comparing the council UDF and the government UDF, if the council UDF had been accepted and there had been 50 per cent open space and fewer houses built and so on, would that not mean that the houses that were built would be a lot more expensive than the ones that are being built?

**Mr STORER** — That really depends very much upon the way in which the market is perceived. It is possible it could mean that. If the developer decided to respond to that lesser land quantity by building higher quality homes with a view to attracting a larger return, that is one possible response. The other possible response, however, is that the land itself would be sold for a lesser amount, and the consequence of that is the developer's costs are therefore lower and the need to sell for a higher value to generate a return does not exist. It is a somewhat more complicated issue starting with the actual sale price and working from there. But that is one possible response, yes.

**Mr KAVANAGH** — If you had 50 per cent open space instead of 30, then the cost of maintaining that open space that you are complaining about would be a lot higher, wouldn't it?

**Mr STORER** — We are talking about two things here. One is that the open space on this site has been developed to a much higher quality than would normally be the case because of the design looking over the open space as a central spine. The second thing is that if we were to get the outcome we were seeking on this site, that open space would have been developed as far more of a parkland/bushland setting, which in itself would actually be no more expensive to maintain than other open space areas, and indeed potentially less. That is because of its proximity to the Yarra Bend Park.

**Mr KAVANAGH** — As it is, you will have a lot more people contributing rates towards the upkeep of that smaller parcel of open space, won't you, than if the council UDF had been accepted?

**Mr STORER** — We will have more people on this site — —

**Mr KAVANAGH** — And more ratepayers?

**Mr STORER** — And yes, they will be contributing to the rate base of the city. However, as we know, the way in which rates are calculated is that essentially every year local government decides what funds it needs to undertake all of the works which the community expects of it and it then divides that cake up by the number of rateable properties in the city, so we do not get a windfall gain. What we get to do is potentially have more slices in the cake, if you like.

**Mr KAVANAGH** — So each slice paid by other people is going to be smaller than it would have been?

**Mr STORER** — Potentially it could be a bit less, yes.

**Mr O'DONOHUE** — Thank you too for your excellent submission and for the detail which goes into the history of the project. If I may just pick up a comment from Mr Kavanagh and just to clarify: as the state government is the responsible planning authority, or the planning minister is, it would be open to the state government to allow some of the site to be developed for social housing as it has become known, would that be correct?

**Mr STORER** — Yes, that is absolutely correct. The state government will say to you that that is what its community residential units are in fact achieving. The accommodation being provided for 100 people on the site satisfies that test. We would say that there is certainly an opportunity for more, and Boroondara has lost quite a lot of social housing over the last few decades — a point we have raised directly with Minister Wynne. The mayor and myself and a couple of other people from council met with Minister Wynne to raise this specific concern, and KRS as a site does offer more opportunity to help respond to that. You will see in our more detailed submission that we also draw attention to this, particularly with the Hawthorn police station site, which is ideally located in the Glenferrie activity centre. It has a tram stop right out the front. It has community uses with a library and maternal child health and day care and so on fairly much right beside it.

For three years we really sought to persuade the government not to simply sell that site, but to take the opportunity to insist that there be social housing provided on that site either by the government or on its behalf as part of a sale process, where it would insist that that be part of the outcome of the land. That land was recently tendered, no such requirements were imposed, and we remain very concerned about that because here was a perfect opportunity for the state government to demonstrate two things. One is that it does take seriously the obligation to provide social housing in Boroondara where there is clearly a need; and secondly, this was an opportunity to actually demonstrate the government's commitment to its own policy in Melbourne 2030, because what that policy says and seeks to do, is to encourage a diversity of housing, a fairer city and essentially take advantage of the natural benefits which activity centres like Glenferrie Road activity centre offer.

**Mr O'DONOHUE** — You made reference in the submission to the inability to levy a developer contribution scheme because that power was taken from you by the state government. What sort of developer contribution scheme would you envisage, had you remained the responsible authority?

**Mr STORER** — If you look at this site, let us assume for a moment that it is going to be around 340 dwellings, and that its occupancy rate is similar to the rest of Boroondara, which is around about 2.3 persons per dwelling. For the sake of the discussion, we are talking about 700-odd people on this site. What we would have said is that those people are going to place extra demand on our maternal child-health services, on our kindergartens, on our day-care facilities throughout Boroondara. It is also going to place extra demand on our existing infrastructure services, particularly roads and drains. We would have sought contributions from a developer to accommodate council's additional cost in responding to those demands; so we would have actually been asking for that on a per-lot basis. None of that was done, of course, in this case, and we consider that to be an ongoing concern.

**Mr O'DONOHUE** — Do you have an idea what sort of figure that may have been in rough terms?

**Mr STORER** — We never actually got to the stage of costing it, so I would not attempt to give you a figure at this point.

**Mr O'DONOHUE** — I suppose it is fair to say that the absence of a developer contribution scheme is a windfall for the developer and the land owner?

**Mr STORER** — That is correct, yes.

**Ms PENNICUIK** — Could you clarify that site you were talking about just before?

**Mr STORER** — The Hawthorn police station and courthouse site in Glenferrie Road.

**Ms PENNICUIK** — That was what I thought you had said, thank you.

**The CHAIR** — Thank you. We have come to the end of our time, so I thank the three of you and the council, and if you would convey that to the council for the amount of work that has gone into the summary.

**Witnesses withdrew.**