

# CORRECTED VERSION

## SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

St Kilda — 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

Mr D. Spokes, chief executive officer, and

Mr G. Oulton, director, city development, City of Port Phillip.

**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 Victorian government policies related to the sale and development of public land. I welcome the CEO of the City of Port Phillip, Mr David Spokes, and Mr Geoff Oulton, the director of city development. 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 a proof transcript in the next few days. They will be able to make typographical and other minor corrections.

David, could I ask you respond to our terms of reference. We are obviously specifically interested in the St Kilda triangle, but we are also interested in council policies generally. We have obviously had submissions from a number of groups. No doubt you have seen that information. Welcome.

**Mr SPOKES** — Thank you, Chair. At the outset I would like to acknowledge the traditional owners and custodians of the land on which we meet. I would also like to welcome the committee to the City of Port Phillip and to our council chambers.

**The CHAIR** — We register our thanks for that opportunity.

**Mr SPOKES** — The City of Port Phillip welcomes the opportunity to participate in this Select Committee on Public Land Development inquiry into the sale and development of public land and open space. I am concerned that there has been some misinformation in some media suggesting that the focus of the hearing is only about the triangle site decision-making process, and I am pleased to hear the Chair's comments regarding the terms of reference into public land generally, and I will certainly make some comments about our policy approach generally and then come specifically to some issues relating to the triangle.

Public land development, as we all know, is of great importance to all of us, especially and including our ratepayers. Chair and members of the committee, before I give you an overview of public land in the city of Port Phillip I would like to indicate a number of key areas of concern relating particularly to our role in St Kilda.

Firstly, past failures that have led to deteriorating assets have in part been due to fragmented management, leading to poor coordination and poor short-term decisions. Secondly, the role of committee of management project facilitator and planning authority, which council currently has, is a legitimate and vital role for managing our city. Thirdly, being a land manager entails a variety of roles, including asset management from a financial point of view to maximise investment and deliver public benefits.

Chair, I am sure we will be able to flesh out some of those issues further in question time, but we would now like to give you an overview of public land within the city of Port Phillip. The city of Port Phillip covers an area of some 20.6 square kilometres and has a population of over 90 000 people. St Kilda makes up the largest neighbourhood, with a population of almost 20 000 according to the 2006 census. Indeed Port Phillip is the most densely populated local government area in inner Melbourne.

The city's population is projected to continue to grow strongly as inner city areas remain attractive, particularly to young adults. The *Inner Regional Housing Statement 2006* projects that future population increases in Port Phillip will be at least 32 000 between 2001 and 2031. Flats, units and apartments represent over 50 per cent of dwellings currently within the city. Development to meet projected population growth is likely to be met in medium-to-high-density housing. There is also a high percentage of lone households and highly mobile populations, especially those aged between 25 and 54 years. The high number of current and future residents living in medium-density housing with limited or no private open space suggests high usage of public land, particularly open space. Activities more usually provided for in private backyards will increasingly need to be provided in the public realm, and this has been a feature of our city for many years.

The most used open spaces in the city are the beach and foreshore, Albert Park Reserve and St Kilda Botanical Gardens, which is based on a 2003 household survey council conducted. Population increase, together with the age distribution in the municipality, also places greater pressure of operational uses on public land, such as schools and child-care facilities. Public land in Port Phillip includes public community uses or operational uses where council has freehold ownership. It includes public community uses or operational uses where the state government has freehold ownership. It includes Crown land granted to council conditionally. It includes Crown land where council

is committee of management, and Crown land managed by the state government agencies, such as Parks Victoria, DSE, VicRoads and the port of Melbourne, and also roads under VicRoads and council management.

Management of public land: there are several layers of control of Crown land. One, ownership, which is invested in the Crown. Land status controls are controlled through Parliament and the minister responsible for land acts and specific pieces of legislation. Planning controls, which can include the minister responsible for the planning and environment act and council as the planning authority. Land management: in some cases council is the delegated manager. Improvement and development: requires coordination between state and local government, tenants and, where required and/or appropriate, the public generally. And finally, regulations on activities and behaviour: this occurs by a dual system of council laws and Crown Land (Reserves) Act regulations, both of which are administered by council.

Each of these layers brings with it different layers of complexity regarding management, maintenance, investment and, where appropriate, change to public land. The majority of public land in the city of Port Phillip is Crown land. Seventy four per cent of council owned or managed public land is held with council acting as committee of management, which comprises, on our estimate, some 121 hectares. In terms of property value, approximately 89 per cent of council's managed and owned land is associated with community uses — for example, aged facilities, arts and culture, children's facilities, libraries, parks and gardens, public toilets and sports and recreation. In terms of area, parks and gardens and sport and recreation reserves account for the vast majority of public land in the city of Port Phillip. Operational uses are also an essential role of public land. Many of these are managed by state government agencies such as schools, police stations and hospitals. Some, like child-care centres and municipal offices, are managed locally by council.

Public lands also have varying levels of significance, be it state, regional or local. For example, the small playground plays a different role to the St Kilda Botanical Gardens, which plays a different role to Albert Park Reserve or the foreshore. Albert Park Reserve forms nearly 60 per cent of public open space in Port Phillip. It is managed by parks Victoria. It provides opportunities for local recreation but also provides a significant regional role for sporting activity and a venue for state-significant events.

The foreshore of the city of Port Phillip is one of the most visited public spaces in the city, and it performs a dual role of destination for visitors to Melbourne and local residents. But the foreshore does have a particularly confusing legislative and management regime. It is managed by different state government departments and agencies, including Parks Victoria, DSE and the port of Melbourne, and is variously subject to a range of legislative regimes including the Land Act, Crown Land (Reserves) Act, Coastal Management Act and the Planning and Environment Act. Interspersed along the foreshore and environs, council has recently been given committee of management for certain sites — some such as Donovans and Stokehouse restaurants for many years, and some such as West Beach Pavilion more recently. Council is also the committee of management of the triangle site, being recently appointed to that role in July 2007.

High visitation, especially at St Kilda, therefore requires sophisticated urban design responses, as expressed in the St Kilda urban design framework. Council has taken the lead, in partnership with the state government, in identifying, implementing and managing change along the St Kilda foreshore. In more recent times, there has been a series of trends in urban public land. These are: one, the recycling and rebirth of public assets — for example, the introduction of library services and community spaces to the Port Melbourne town hall; the conversion of a former bowls club in St Kilda for the Veg Out community garden and arts hub; recent upgrades to the South Melbourne Market; the reinvention of Gasworks park in Port Melbourne as a park with community, arts and commercial uses.

Two, increasing community value of conservation/heritage assets. Examples include preservation of the Palais Theatre, water use in parks and gardens, management of the penguin population at St Kilda breakwater and the retention of bluestone laneways throughout the city.

Three, the pressure on operational public land, such as schools, child-care facilities and police stations. There is a need for expansion of services, consolidation of sites and innovative solutions. Examples of such consolidation and innovation in Port Phillip include the community educational hubs program and the land swap with the education department and council to enable the Poets Grove development in Elwood — now recognised as a model nationally — and Liardet Street, Port Melbourne, which combines young persons accommodation and public parking provision.

Four, the development of public land through partnerships, which seek to: derive public benefits from private sector input, and allow for the retention of public land in public hands. These are especially relevant in areas of high land value, as there is no need for a development to provide a return on the land value, only on the up-front and ongoing costs of infrastructure. These provide ways to develop public land for public benefits that would not otherwise eventuate — for example, the Port Phillip Housing Association in Port Phillip, which provides and manages scarce affordable housing stock. This has included recent developments with council, such as the Oasis development on council land and the Argyle Street housing development, both of which were achieved in partnership with the council and a private developer. The Woodstock rooming house development is another example of a council-led housing initiative.

The fifth trend, changing leisure patterns, has seen a wider acceptance of a range of activities on the foreshore as recreational pursuits. This has resulted in some more commercial activities on some public land, such as various kiosks and restaurants along the foreshore — such as West Beach Pavilion, Donovans, Stokehouse and Sails on the Bay; market activities in streets and parkland; kite boarding and in-line skating on the foreshore; Dusk Cinema in the Catani Gardens; beach volleyball; and the night markets in Catani Gardens and O'Donnell Gardens. However, clearly much public land is not suitable for commercial activity — for example, national parks, conservation reserves and ornamental gardens — and these must be managed with public funding. Other public land, however, can be suitable for appropriate commercial activity, such as sporting facilities, leisure and recreation precincts and tourist attractions. Here it is important to retain public sector control while harnessing private sector finance and investment.

It would be possible to provide indirect government funding support by way of forgoing revenue rather than up-front funding — for example, the waiver of certain regulatory fees. It may be that there is a need for policy development on: funding sources in relation to the development of public land; the appropriate level of public input — in relation to and in addition to town planning requirements — where development of public land is judged appropriate; and thirdly, the appropriateness and level of commercial development on public land. Where freehold land is concerned, a freehold owner frames a development proposal and the planning system responds to it. Here, the public has little chance to influence an owner's decision to develop, only to object to it.

On public land, where private investment is judged to be appropriate, the land might, for example, be developed through the sale of public land to private interests or via a leasing arrangement. Whatever the case, sufficient length of tenure and certainty is required in order to facilitate the investment required. We would contend that the advantage of leasing arrangements over freehold — and this is the leasing arrangement proposed at the triangle — is that the ultimate control of the public asset remains with the public sector, and the ability to influence positive outcomes and community benefits over the long term is increased.

Chair, I now come to the specifics of the triangle site. Council has, in partnership with the state government, put in motion the redevelopment of the triangle site, bearing in mind many of the previous considerations I have mentioned. Council witnessed firsthand the degradation of the land, notably the Palais Theatre. There are historical reasons for this, including that the previous lease did not provide for the upkeep of buildings. The land and the lease were managed by the former Lands Department under the Land Act, and provide an example where the attention required for a public asset was sadly not evident.

Historically, it is also worth reflecting upon the Kennett government's Gateway to the Bay policy in 1999. It proposed clustering higher-density residential development in St Kilda and Port Melbourne through the sale of public land and private development. Notably, the triangle site was identified at that time as one of the 'landmark locations and opportunities'. The strategy council embarks on specifically rejects that strategy of sale of land and specifically rejected the use of the land for the highest and best purpose of residential purposes. Tireless effort has been devoted to the triangle site for many years by council in relation to the current development proposal. In these circumstances it was wholly appropriate that council was given management of the site in July 2007. The site has historically been used for commercial purposes for almost 100 years — theatre, live music, markets, fun park and more recently car parking. This, together with the level of funding required, makes the triangle site appropriate for private sector funding and commercial and public uses in order to realise, retain and maximise public benefit.

The council's approach to the triangle redevelopment is to retain the land in public ownership and for the asset to be handed back to the Crown in a fit state at the end of the lease; to reinvigorate the Palais Theatre and St Kilda foreshore; to explore a range of competitive options and solutions for the site through a competitive, market-tested process; for the City of Port Phillip to be custodians of the land in partnership with the state government and

community; to maximise public benefits through private sector development, with ongoing public sector control through the lease; and to allow for an appropriate level of proactive public consultation through the formation of the urban design framework and the planning controls.

Chair and members of the committee, in summary the council is absolutely of the view that the concurrent responsibility of land manager and planning authority is appropriate and indeed fundamental to delivering on a vision informed by strong community consultation over many years which is then defined in the agreed planning rules, and then determining and managing a transparent and competitive process to establish locally controlled development. This process from its inception has received bipartisan support and has been governed by the highest standards of probity, transparency and community input. In our view it is a model to be emulated, and it continues to be.

Finally, this is reaffirmed by the view of many government planners around the world, particularly in Vancouver, where we have studied recent experience that suggests that the model of responding to community input, developing the vision, setting the rules and managing a competitive process is most likely to lead to financially viable proposals that deliver substantial public benefits, and we are of the view that this is what this proposal offers. Thank you, Chair. We would be very pleased to answer any questions.

**The CHAIR** — David, I thank you for your contribution. It was certainly very informative. I have many questions, but I thought firstly I might just get some basic information clear. Do we have a current development plan that the committee can look at? Is there a plan that we could — —

**Mr SPOKES** — We would be pleased to provide the development plan that was considered by council, and that has been approved subject to further changes. That information can be provided to the committee.

**The CHAIR** — So subject to further changes. There are to be further iterations?

**Mr SPOKES** — The decision of the council was that it was approved. It made some alterations to the plan. Those need to be submitted and endorsed by the responsible planner. That process is currently occurring.

**The CHAIR** — Forgive me for asking this now, but is it possible to have a plan that we could perhaps look at a little later today?

**Mr SPOKES** — We can certainly provide the material to you that has been submitted to council and was the basis of the council decision. We would be more than pleased to do that.

**The CHAIR** — The other thing I want to get clear is the size of commercial space and so forth in the development. The figure that has been put to me is 110 000 square metres in the St Kilda triangle development, with about 30 000 square metres of that being car parking. Am I correct? I am just wanting to get these facts on the record so that I understand this completely.

**Mr SPOKES** — Certainly, Chair. Mr Oulton, I am sure, can assist you.

**Mr OULTON** — Those sorts of details are available in the public planning documents which council considered as part of its approval of the site, and they are available on our website. The 7 February meeting would have those details available for you.

**The CHAIR** — I am just trying to get this on the public record here now.

**Mr OULTON** — It is already on the public record, on our website. We can provide a copy.

**The CHAIR** — No, on the transcript. Am I correct in that 100 000, 110 000 figure?

**Mr SPOKES** — Chair, that figure would not be correct. The final configuration will require the final endorsement, as I mentioned before, but the overall parameters of the proposal are that more than 50 per cent — close to 60 per cent — of the site at ground level is to be used for open space. Council's decision sets a cap on the use for retail spaces.

**The CHAIR** — At what?

**Mr SPOKES** — At a maximum of 20 per cent of the available floor area. Some of that information does require further finalisation, and we are happy to make that available to you, but some of that at this stage is not yet finalised, but I think the broad — —

**The CHAIR** — The council has approved a plan and the size of commercial space is not yet fixed? Am I right in that figure of 110 000 being in the ballpark?

**Mr SPOKES** — Chair, the council has approved a development plan in accordance with the planning scheme that outlines the range of uses that are permitted. It is structured on the basis that a series of commercial activities are necessary to fund a level of public benefits. There is in the draft development plan an indicative indication of those floor areas, which reflects the range of figures that you referred to, but the final set of figures will be subject to the final endorsement of the plan.

**The CHAIR** — Because that seems to me, if it is even in that ballpark, to be a very big development. A figure provided to me earlier today was: Chadstone has 137 000 square metres. If you are talking about 80 000 square metres plus 30 000 of car parking, it seems a fairly intense development for what is a small area of land. Would you concede that?

**Mr SPOKES** — Chair, the council, in its planning role, made a decision that the proposal conformed with the planning scheme, which allows for a range of uses, including cultural entertainment facilities and open space supported by a level of commercial activity to fund some of that.

**The CHAIR** — The other question I had initially, and I will come back after others have asked questions, is on the assistance provided by the Victorian government. I want to get this very clear on the transcript too, so that I am clear, the committee is clear and the community is clear. This land is owned by DSE, the council is the committee of management, and you are indicating that this development is occurring in partnership with the state government. Has the state government contributed financially to the process in terms of a direct contribution or other contribution that you would enumerate?

**Mr SPOKES** — Chair, the development has proceeded in partnership with the state government. We are the committee of management acting as the agent of government.

**The CHAIR** — The DSE.

**Mr SPOKES** — Yes, the DSE. The tender proposal that went out to the market, preceded by an expression of interest, was quite specific that no government contribution was anticipated in the project. Clearly the government would have incurred some incidental costs from a management point of view and certainly would have incurred costs in regard to the legal action with the previous tenants, but you would have to ask them about the details.

**The CHAIR** — But I am specifically trying to get to the fact that the state government has not made any indication, including at the time near the council meeting, that there would be any direct state government contribution to support the project or develop the project.

**Mr SPOKES** — The tender made quite clear that it was to proceed and government was not committing funds to the project, and that, to my knowledge, has not changed.

**Mr TEE** — I just want to get a sense of the legal parameters in which we are operating. As I understand it there is a development plan overlay, which has got a schedule which relates to the triangle site, and that schedule provides the decision guidelines, which are really what is guiding the council. Is that your understanding of the position?

**Mr SPOKES** — Yes, that is correct.

**Mr TEE** — It might be helpful if I just provide the witness with an extract of the schedule, which I am happy to make available to everyone. On that schedule can I ask you to have a look at page 2. You will see there that at 4.0, under the heading 'Decision guidelines', it says:

In assessing a development plan or an amendment to a development plan, the responsible authority must consider:

Then there is a list of a number of other factors. Can I firstly confirm that the responsible authority in that case is the council?

**Mr SPOKES** — Yes, that is correct.

**Mr TEE** — Then if you have a look, I think there are some 20 guidelines which the council must consider, and they include retention, renewal and refurbishment of the Palais Theatre, improved pedestrian and visual connections between the site, the foreshore and the Upper Esplanade, building on the existing landscape, character and themes, the impact on existing view-lines, the adequacy of car parking and so on. Those are the guidelines within which the council is operating and those are the guidelines within which they have now approved the development plan. Is it your view that the development plan is consistent with those decision guidelines?

**Mr SPOKES** — That is view that the council formed in approving the development plan in February, so the answer is yes.

**Mr TEE** — I take it that if the council failed to comply with those guidelines — so, for example, if it did not consider the urban design framework — there would be remedial action available to anyone through the courts under the Planning and Environment Act?

**Mr SPOKES** — Chair, the committee may be aware that in this instance the third-party appeal rights do not pertain to the development plan. Council needed to satisfy itself that the decision complied with the planning scheme. It gave consideration to these matters and on balance made the view that it is consistent and therefore accords with the planning scheme. So on that basis, subject to the endorsement, the development plan overlay provides an authority for the developer to proceed.

**Mr TEE** — Just a couple more, if I may. We have a submission, I think, from Unchain St Kilda, and I think we will be hearing from them this morning. They in their submission suggest that the development plan does not comply with the urban design framework, and I am wondering if you can respond to that concern that has been raised.

**Mr SPOKES** — This is a matter that has been raised consistently. Council has taken the view that the approval needs to establish whether it needs to consider the design guidelines that you referred to. It does not need to make a judgement that it is 100 per cent compliant in every respect. The Unchain St Kilda people have presented a different view. All our planning advice and independent advice indicates that the decision that council has made is appropriate.

**The CHAIR** — Just to understand that, what you are saying is that the council's responsibility is to consider the development plan — the UDF, rather — but not necessarily adhere to it?

**Mr SPOKES** — I can only rely on the words that are in the planning control, and they make it quite clear that council's response is to give consideration to those matters.

**The CHAIR** — So it could easily be that something quite inconsistent could be approved after you had considered the UDF. In effect it is a very wide parameter. You could drive a truck through that, I put to you.

**Mr SPOKES** — That is not a view that the council has. The urban design framework specified the objectives that were to be assessed. They then need to be assessed against a particular planning proposal, which is the one that we have considered, and then needs to apply the rules.

**Mr TEE** — The other issue that the submission that Unchain St Kilda has provided us deals with is the issue in relation to consultation. They say there have been limited rights to participate. I am wondering if you could provide us with an outline of the consultation that there has been with the community as the process has unfolded.

**Mr SPOKES** — We would contend that in fact there has been very significant consultation, which has essentially occurred in four key stages: stage 1 was from 2001 through to mid-2004, which entailed setting the rules through the development of the urban design framework and amendment of the Port Phillip planning scheme; from April 2005 through to May 2007, where there was ongoing stakeholder and community information on the expression of interest and request for tender process within quite defined probity restrictions; from May 2007

through to September 2007, advising people about the winning bid; and from November 2007 through to February 2008, the display of the development plan responding to public submissions.

Particularly I would draw the committee's attention to the first stage I mentioned, where an extensive community consultation program was undertaken which included establishment of a joint working group to promote a whole-of-government approach to the future development of the St Kilda foreshore; a 2020 vision process involving urban design workshops and displays, which enabled wider community participation in the development of key principles for the foreshore and included a series of discussions on the foreshore in public venues; establishment of a community reference panel which included key stakeholder interests; informal exhibition of the draft urban design framework plan leading to refinement of the documents based on community stakeholder and working groups, including a series of community forums — three forums with interested and key stakeholders; a public marquee on the St Kilda foreshore over two weekends to allow the public to view and comment on the draft UDF; a public council report in February 2002 which approved the urban design framework and resulted in a resolution to exhibit the amendment to the Port Phillip planning scheme — this amendment included changes to the policy and provisions of the planning scheme to facilitate implementation of the UDF; and a further public exhibition process which lasted 21 days and resulted in a total of 17 submissions from the public, all of which were withdrawn after negotiation. Following this early stage of preparation, Chair, in total we estimate there have been at least some 60 separate conversations with the community about the project.

**Mr THORNLEY** — I guess I have had the chance over some time now to speak with people on both sides of this dispute, and most of them seem to be decent, community-minded people who actually share a pretty common set of values, and that seemed to be reflected in a strong support level for the UDF as it was developed. I am just trying to understand where in the consultation process, from your perspective, things have gone awry in the sense that we clearly now have a situation where people who otherwise might share a common set of values on a range of things and thought they had agreed on a UDF are now very far apart.

**Mr SPOKES** — I think in any planning process at the point a decision is made there are some issues that some parties will feel they agree with and others that they will disagree with. I would suggest that the consensus around the urban design framework clearly said what was important was to retain the site as a cultural and entertainment precinct. It rejected highest and best use, such as residential. It said it was necessary for open space — high-quality open space — to be provided and that other public benefits such as car parking needed to be maintained. The process has led to the point of assessing a particular proposal against those standards. Council has formed the view that it in fact delivers that. The UDF quite specifically refers to the need for a level of investment and commercial activity to fund those public benefits. This is a high-profile and very important site and is always likely to attract a level of controversy, so to that extent that is not surprising.

**Mr THORNLEY** — Can you just outline a little bit more about the Vancouver comparison that you were making?

**Mr SPOKES** — I was simply making the point that Vancouver, which has a reputation as one of the world's most livable cities, has grappled with this issue of intensification of use and has explored a number of models for private investment delivering public benefits — and I think some of the techniques that we have sought to apply here are not dissimilar — and have been quite successful.

**Ms PENNICUIK** — Thank you, Mr Spokes. I am sure you know my feelings on the subject. They are fairly public and I have mentioned them to you in our conversations. I would like to say that I think behind all this are some structural problems, which as I commented at the 7 February council meeting have led to the unhappiness that is in the community. You outlined the process of the development of the urban design framework, which I think is pretty accurate; I was involved in that, and that was inclusive, but it appears that since then the public has been pretty well locked out. One of the reasons is the loss of third-party rights, and I wonder if you could outline to the committee, for the public record, how that came about?

**Mr SPOKES** — The final phase of approving the planning scheme amendment as a development plan overlay was done in partnership with the relevant advisors and government representatives. It was submitted to the minister for his consideration and was approved according to that process. But council also insisted, notwithstanding that third-party appeal rights would not apply at that stage, that when we were considering a specific approved bidder we would seek further advice from independent planners on the proposal and encourage the public to make submissions to that process, and that is what we have done.

**Ms PENNICUIK** — But in effect the public has to rely on your advice that you have received from state government bureaucrats and from independent consultants, and rely on your having made the right decision based on that advice. That decision cannot be tested, whereas in other development proposals that decision can be tested — in VCAT, for example.

**Mr SPOKES** — The process that we embarked on very specifically sought to define with the community what it wished to see developed on the site and have those rules represented in the planning scheme, so that certainty was provided both to the community and to investors. At a point in time that a development is considered, that needs to be assessed against those planning rules. And that is what we have done. We have added in an additional measure of asking the public to submit, over and above that, their views about the proposal, and a requirement of the request for a proposal was the developer negotiate and discuss with the local community their proposal, and that has occurred over the last six months.

**Ms PENNICUIK** — Yes, but I put to you that it is not just that there is a proposal there and some changes have been made about the proposal, but the actual vision of that proposal does not coincide with what you have outlined yourself, which was ‘cultural and entertainment and public space’. There is a lot more on that site than that — there is a hotel, there is a supermarket, there are 160 shops, there is a William Angliss College, there is an art gallery. I see now a tenpin bowling alley has been added. None of these things were envisaged in the urban design framework, and the community, of which I am part, really was of the view that they were going to get something a lot different from what they have been presented with, and we now have a situation where there is no umpire there. So the community’s view of what the urban design framework planning scheme should deliver is not what is being delivered.

**Mr SPOKES** — The urban design framework specifically refers to a hotel. A range of the uses that you have mentioned are in fact provided for. Council has made an assessment based on the application of the design criteria, and has formed a view that it is compliant, that it delivers on the core benefits that we were seeking to have delivered — and that is the basis for the council decision.

**Ms PENNICUIK** — Could I just turn to another comment you made earlier in your contribution, where you mentioned that it was appropriate, in your view, for the council to wear all hats, in effect — to be the proponent, to be the responsible authority, the body that looks at the tenders and the body that then applies the planning scheme. I would put to you, Mr Spokes, that to the community that looks like too many hats and conflicting hats, and in fact a conflict of interest. Would you like to comment on that?

**Mr SPOKES** — Yes, I will be happy to. I will just make two comments. Firstly, the stage of preparing a planning scheme amendment: after a lot of public comment, attracted 17 objections, which were then withdrawn following negotiation. So council’s view is that the issue of the third-party rights was dealt with at the front of the process to ensure that the rules were driven locally rather than imposed. Secondly, the issue of being both the land manager and the responsible authority, we sought specifically to address. Our past experience, where we were not the land manager, was that even though planning controls might exist various activities occur that you actually cannot control. The measure that council put in place to provide the level of public confidence in the separation of roles was to establish the St Kilda’s Edge Committee, which is charged with the overall responsibility of delivering the projects to deliver that strategy — one of which is the triangle site — and includes a range of other independent people on that group. That has been the major mechanism to address the issue that you have raised.

**Ms PENNICUIK** — So, Mr Spokes, just to be clear: you do not agree with the proposal that I would put, and many in the community would agree with, that there is a conflict of interest in the council wearing all hats in this particular regard?

**Mr SPOKES** — We have been conscious of that concern and have put in place appropriate measures, and at every step of the process our probity advisers have indicated that that has been performed absolutely appropriately. So we are conscious of the concern, we have put in place a process to manage it, and the probity auditor has confirmed that that is the case.

**Ms PENNICUIK** — Mr Spokes, I would say that I think, from my point of view, having this issue where the council wears all hats in conjunction with loss of third-party rights really is a recipe for disaster, which I think we have before us. But if I could move along, I would like to talk about the Palais Theatre, which seems to be part of the crux of what the development we have before us is now. Certainly council has made statements and the

developer has made statements that we need to have this development in order to refurbish the Palais. I would question that, but that is certainly what is being said — that the price of keeping the Palais is this development. So I am wondering: has the council commissioned any independent studies as to what is required — in terms of what needs to be done and what that would cost — to refurbish the Palais and remediate some aspects of the land on the site that need remediation? We are being told that there is \$20 million being put in. Is there an independent assessment of that?

**Mr SPOKES** — As a part of the process of evaluating all of the bids, we have taken independent advice from professional quantity surveyors to verify all of the costings, including the estimate for the works on the Palais.

**Ms PENNICUIK** — But, Mr Spokes, you have got independent advice on what has been put to you by the developer? Is that what you are telling me?

**Mr SPOKES** — Yes.

**Ms PENNICUIK** — The council itself has not said, ‘We will, as the committee of management of that site, commission a study to find out what is actually required at the Palais in terms of refurbishment and how much that will cost.’?

**Mr SPOKES** — The process the council embarked on was a different process. We agreed the rules based on the urban design framework, we established a tender process that asked for proposals to deliver that, and that is what we have assessed, so that has been the basis under which we have proceeded.

**Ms PENNICUIK** — I have one more question about the Palais. It has disturbed me since I first saw the development proposal that the proposal includes buildings that are basically attached — parasite buildings, I call them — to the Palais on two sides so the Palais does not remain a freestanding building, which it is now. Has the council obtained any independent heritage advice on that?

**Mr SPOKES** — The council has made the planning decision based on all of the advice, and in fact that included changes to the alignment of the buildings abutting the Palais to address the issue you have mentioned, and council formed the view that that was appropriate.

**Ms PENNICUIK** — Council formed the view. Have you had independent heritage advice on that?

**Mr SPOKES** — We have had advice on a range of matters, including heritage issues.

**Ms PENNICUIK** — Is that advice publicly available?

**Mr SPOKES** — The advice that has been provided to council to support the planning decision, unless it is commercial in confidence, has always been made available.

**Ms PENNICUIK** — It has been made available if requested. But is the advice you are talking about available on the council’s website?

**Mr SPOKES** — Advice that is publicly available as a part of the planning process is routinely placed on our website and made available, and that has been our process in this project.

**Mr O’DONOHUE** — Thank you for your evidence this morning. I am interested to know where you are going to place the extra 32 000 people who will move into this municipality between now and 2031.

**Mr SPOKES** — I am not sure how that complies with the terms of reference of this inquiry.

**Mr O’DONOHUE** — I am just responding to the evidence you gave earlier.

**Mr SPOKES** — I am simply making the observation that they are the circumstances within which we are planning the city. Mr Oulton may be able to comment more directly on developments in the pipeline that we feel will accommodate that.

**Mr OULTON** — Perhaps if I could add that council, as with many councils, has prepared an analysis of the housing demand and growth and looked at areas of redevelopment potential through the city and has satisfied itself that in fact as part of the inner region of Melbourne we can accommodate those additional dwellings and

those additional properties. Again our housing strategy sets out the thinking, the analysis, the data and the conclusions that we have come to in relation to that.

**Mr O'DONOHUE** — It is worth making the point that 32 000 additional people will require more than 32 000 additional residences, given that people per residence is generally declining.

**Mr OULTON** — Although it may be declining, we would never get less than one person per dwelling. Although there is a decline in the overall occupancy, there is still a lesser number of households than people moving into the city. I would have to refer to the strategy to give you the specific data. I could provide that to the committee if it would be of assistance.

**Mr O'DONOHUE** — I am interested in your opinion on the impact the St Kilda triangle project will have on the traders in Fitzroy and Acland streets. It is something that has not been mentioned this morning, but I know it has been a topic of discussion more broadly. Would you like to make a comment about that?

**Mr SPOKES** — Yes, Mr Oulton will.

**Mr OULTON** — As part of council's planning consideration it called for a community and economic impact assessment. That was prepared by independent parties. They looked at two different scenarios about the degree of integration between Fitzroy Street and Acland Street. Council has now put in place a plan to work towards the situation that sees an improved integration between Fitzroy and Acland streets and the triangle site in order to deliver maximum benefit to the community.

**Mr O'DONOHUE** — What do you say to the proposition that trade among those traders may decline between 10 per cent and 30 per cent if the project goes ahead as proposed?

**Mr OULTON** — The independent advice that council considered was that any impacts on trade would be within what are considered acceptable levels in that industry.

**Mr O'DONOHUE** — How do you define 'acceptable levels'?

**Mr OULTON** — That was defined by the independent experts as being within a range of a 10 per cent to 15 per cent impact on trade.

**Mr O'DONOHUE** — Right, so it is anticipated that trade will decline by 10 per cent to 15 per cent based on — —

**Mr OULTON** — No. Your question was, 'What was the acceptable range?', and the answer is, 'Ten per cent to 15 per cent'.

**Mr O'DONOHUE** — So council considers that to be an acceptable range?

**Mr OULTON** — That was the independent advice we have received and which council has considered as part of its planning application.

**Mr O'DONOHUE** — Has council adopted that? Council has considered it, but has council adopted that position?

**Mr OULTON** — Council has made a decision based on that and a range of other inputs.

**Mr SPOKES** — Chair, can I just add that council, in considering the impact, has adopted the view that it will take a series of measures to ensure the integration of the precinct of Fitzroy and Acland streets to maximise the economic benefits for all concerned. We have measures in place, and we are confident that that is a more likely scenario than the one that you described.

**Mr O'DONOHUE** — It is not a situation I am hoping for, but it is something which has been found to be the case by other experts and something which I know the local traders are most concerned about. It is concerning to think that council itself may foresee a drop in trade of 10 per cent to 15 per cent.

**Mr SPOKES** — That is not the council's view. The council's view, assessing the advice, which described a series of scenarios, one of which was a drop in trade and another was that if there were certain actions that we

took to promote integration and manage the precinct from an integrated point of view, there would be a net increase over time. That is the position that council has adopted, and that is what we will be committed to bringing about and we are confident that will be the result.

**Mr O'DONOHUE** — If I could also take you to the Vancouver comparison that you made. Isn't the threshold issue here underinvestment by the state in public infrastructure? If public-private partnerships are required to deliver a public benefit, isn't the underlying issue here underinvestment by the state?

**Mr SPOKES** — There is a range of assets for which we have responsibility. Some of them can earn some revenue to support the activities; others do require direct investment. Those activities to fund open space, recreational activities, can be supported by a range of commercial activities. This site has always been used for commercial purposes, and we are seeking to get a combination of uses that are consistent with that but also deliver revenue to ensure that the public benefits can be maintained in the future. Any government of the day is free to choose to provide additional funding to support that.

**Mr O'DONOHUE** — I acknowledge that, but I am just asking: isn't the underlying issue here a lack of investment and therefore the requirement for the council and other public bodies to seek revenue from other sources?

**Mr SPOKES** — Council has a responsibility managing assets to seek a range of revenue sources, including public funding and/or private funding or a combination of both.

**Mr O'DONOHUE** — Ms Pennicuik made the point that there would be, at least at a minimum, a perception of a conflict of interest or lack of an arm's length transaction when the council is proponent and ultimate decision-maker. As Mr Tee highlighted by his question, there are no appellable rights. I am concerned about that. I am also concerned about the perception and the reality that there is an unfair advantage in that there is a planning system here that private citizens, private corporations, have to comply with, but when it comes to state or public authorities there is a different set of rules.

**Mr SPOKES** — I do not think that is correct. Council is not the proponent in this instance; council is the planning authority and then is the land manager. The project will be delivered through a leasehold arrangement which ensures the site remains in public hands. The rules and an opportunity for development were put out to the market; anybody could have chosen to respond to that. We had 17 high-calibre proposals, and they have then been assessed to come down to a preferred bidder. So any party could have been a part of that process.

**Mr O'DONOHUE** — I hear what you are saying in your evidence, but whilst you may say you are not the proponent, earlier you said that one of the benefits of retaining or having the management of the site is that you can make sure that uses that the council does not agree with are not introduced.

**Mr SPOKES** — I am making the distinction that unlike, for instance, Fitzroy Street shopping precinct, which might be made up of any number of individual operators and we are not the landlord, in a situation such as the triangle site, where there are significant concerns that we understand about community impacts and various other issues, by being the landlord we are in a better position to insist on a standard of performance. Being the landlord does not equate with us being the proponent.

**Mr O'DONOHUE** — That may be the case in a technical sense, but from the broader public perception I think there is very little difference. I just make that comment.

**Mr KAVANAGH** — This morning members of the committee were given a postcard which you have probably seen before from Unchain St Kilda. It says:

Photo montage shows projected shape of building and loss of views from corner Robe Street and Upper Esplanade.

I think you know it. Could you comment on whether you think that is an accurate depiction of how the site will look when it is finished?

**Mr SPOKES** — To the best of my knowledge that was prepared well prior to council's decision in February, which included some adjustment to the view-lines.

**Mr KAVANAGH** — So you are saying that it will not look like that?

**Mr SPOKES** — I can only reiterate my earlier advice to the committee, Chair.

**Mr KAVANAGH** — The UDF it requires protection of sightlines to the foreshore, or recommends it, does it not? But from what we have heard, the sightlines will change; there will not be sightlines from the foreshore. How did council consider that in — —

**Mr SPOKES** — There are some sightlines that are altered. The vast majority of them are not altered, and additional views are created. All of that is consistent with what the urban design framework sought to achieve. So council formed the view that those alterations to those views are not significant but equally has sought to improve those views at every opportunity, and some of the conditions that the council put on the decision in February also seek to deliver further improvements. So we are of the view that that issue has been more than adequately addressed.

**Mr KAVANAGH** — The UDF also requires, more or less, preservation and protection of the Palais Theatre. Taking up Ms Pennicuik's point about buildings abutting the theatre, you have said that you had expert advice that was consistent with heritage requirements. Was it considered whether that was preserving and protecting the Palais Theatre?

**Mr SPOKES** — A conservation management plan has been prepared by Allom Lovell for the site. Any approvals or permits relating to the Palais would need to be issued by Heritage Victoria, so we believe all of the appropriate measures are in place: (a) to ensure that it is protected and preserved — it is a major feature of the project; and (b) that a viable use is found that enables the asset to be maintained in a proper and fit condition for the next period of time, which clearly was not the case in the recent past.

**Mr KAVANAGH** — How long are the leases for?

**Mr SPOKES** — The request for tender provides for a 50-year lease with a series of options of 21, 21 and 7 years, so the maximum term of a lease on the total site would be 99 years.

**Mr KAVANAGH** — You mentioned in your introductory comments a land swap that you had made. Could you tell us about that, please?

**Mr SPOKES** — Yes. In fact I neglected to say that we would be pleased to table the submission for the committee that I spoke to before. I was referring to a recent child-care and education facility that council, together with state government, has funded in Elwood on primary school land. We were able to do a land swap with a roadway that was unused and provide that as playground to the school, and in return we have been able to do a new development on that site. So we regard that as a good example of a partnership to deliver community benefits.

**Mr KAVANAGH** — Which authority had the land you swapped before?

**Mr SPOKES** — That was done — it would have been the education department that would have owned some portion of the — it is Crown land in the management of the education department. The other land of council's, I think I am correct in saying, was freehold land.

**Mr KAVANAGH** — Did that take very long, and how difficult was it to do that with the education department?

**Mr SPOKES** — It was a lengthy process. We would hope, applying the lessons from such projects, that they could be done much more expeditiously than was the case there.

**Mr KAVANAGH** — Is that the first one that you are aware of council doing?

**Mr SPOKES** — Mr Oulton may have some others. I mentioned a number of housing projects which are not dissimilar. Liardet Street in Port Melbourne is another one that I am familiar with.

**Mr THORNLEY** — We would be keen to hear those. I think Mr Kavanagh is probing on another issue that this committee is considering about the ease or difficulty of transactions between publicly owned agencies, and that is probably not what you have primarily prepared for today, but we would certainly be keen to hear other thoughts on that, if you have them later, as well.

**The CHAIR** — The information could follow.

**Mr SPOKES** — We would be pleased to talk to you about it.

**Mr KAVANAGH** — What was the attitude of the department generally in the process, would you say?

**Mr SPOKES** — I think they were desirous, and could see the benefits. Like anything that is a bit new, sometimes it takes some time to get it through the bureaucracy. We certainly think there are some lessons there, and we will be reminding them of it at every opportunity.

**Mr KAVANAGH** — You mentioned community hubs as well.

**Mr SPOKES** — That is a policy that council has had in place for some five or six years to try and make sure we get multiple use of our community facilities located in areas that have easy access to residents and people working in the city. So that has been a very conscious asset management strategy that we have used, and that has also been successful in leveraging financial support from other levels of government. They can see that we have got a strategic attitude to that issue.

**Mr KAVANAGH** — Implementation of that plan would require perhaps future land swaps with government departments?

**Mr SPOKES** — Yes, it could. I can think of one where that might be the case.

**Mr KAVANAGH** — Facilitating the ability to swap land with government departments could be important to Port Phillip's long-term development?

**Mr SPOKES** — Yes, that would certainly be something we would be very supportive of.

**The CHAIR** — I have another couple of questions, and I know some other committee members do, so we will try to move through those as swiftly as we can. Did you meet with or discuss the development of the St Kilda triangle with the former member for Albert Park, former Deputy Premier and former planning minister, John Thwaites?

**Mr SPOKES** — We, in preparation of the tender process, were very much guided by the Department of Sustainability and Environment in the terms under which the agreement could proceed, including the terms and conditions in the request for proposal that outlined what financial contribution, if any, there would be from government, and as a part of that preparation we briefed the local member and relevant ministers during the course of the project on how the project was taking shape. So, yes, we have had a series of briefings with the people you have mentioned.

**The CHAIR** — What was the nature of the response from Minister Thwaites?

**Mr SPOKES** — I cannot comment on his particular attitude. All I can say is that we provided a briefing about how the process was being managed, what the terms of that would be, what we hoped to get out of the approach and what opportunities we saw for local area. We certainly emphasised the community and economic benefits of the proposal.

**The CHAIR** — Would it be fair to say that he was a proponent of this and was an advocate for this particular project?

**Mr SPOKES** — Chair, I think that is a question you would need to put to him. All I can say is that we regularly, as we do on many matters, brief our local member on matters that were of relevance to his electorate. I could not add to anything.

**The CHAIR** — In his role as minister in DSE at the time, did he advocate for this project?

**Mr SPOKES** — I do not know whether he has advocated for the project outside of my knowledge, Chair.

**The CHAIR** — Did he, to your knowledge?

**Mr SPOKES** — I am not aware of that.

**The CHAIR** — Not to you?

**Mr SPOKES** — We provided briefings to the member in his role as the local member to keep him abreast of the project. I cannot comment about what he may or may not have done with any information that we gave him.

**The CHAIR** — I am quite specifically asking whether in his role as DSE minister he advocated to you for this project.

**Mr SPOKES** — I would assume — I mean I would have to check our records — but I would imagine that we were working with the Department of Sustainability and Environment in accordance with an agreement as to how the project would be managed. They would have the responsibility of briefing the minister. That is not a responsibility that I have; all I can do is brief him on the matters from the perspective of the council. I would imagine that the DSE representatives would have briefed him about the project in his role as environment minister.

**The CHAIR** — I am asking in a slightly different capacity here, but certainly information that has been put to me suggests that some of the push for this project came from Mr Thwaites.

**Mr SPOKES** — I am not aware of that.

**Mr TEE** — It is a bit unfair though. You are putting an allegation to him — —

**The CHAIR** — You may find it unfair, but I think it is a central point. If the department and the government are advocating for this project, it puts the council in a very different position.

**Mr TEE** — If you have information, you should give it to him.

**Mr THORNLEY** — We are in a public forum. Share the information.

**Mr SPOKES** — Chair, all I would reiterate are my comments that are tabled in this submission, which I am happy to leave with you: that following the concerns that were raised with the Gateway to the Bay project, which saw the prospect of the land being sold off for high-rise development, which we did not think was appropriate, we took the initiative to establish what was appropriate on the site and have sought to liaise with government departments to bring that result about.

**Mr TEE** — I suppose initially in terms of the issue of a financial contribution from government, can I indicate that, as a representative of the eastern suburbs of Melbourne, it is certainly my view that the electorate there would prefer to see government funding continuing to go towards rebuilding schools and rebuilding hospitals in my electorate, and I say that recognising that this is an important local project, but again, from that broader perspective, I suspect there are other priorities. I just want to turn to the issue of the third-party appeal rights. Is that issue an issue that is addressed in the Land (St Kilda Triangle) Act of 2006?

**Mr SPOKES** — Mr Oulton may want to add to this. It is not a function of the triangle legislation.

**Mr TEE** — No.

**Mr SPOKES** — It is a function of the DPO.

**Mr THORNLEY** — I will ask one. I am concerned to hear some of the opposing views that are due up, but since the question has been raised: I notice that the Liberal members of Parliament also spoke in favour of the bill when this went through the Parliament. Did you brief them as well as part of that role?

**Mr SPOKES** — Yes.

**Mr TEE** — Sorry, I just missed a question. You indicated that the Liberal Party when in government had a view which supported cluster, or high-rise, development on the site. Have you seen anything that suggests that that policy position of the Liberal Party has changed?

**Mr SPOKES** — I could not comment on that.

**Ms PENNICUIK** — Mr Spokes, I understand that some parts of the development have caps on them in terms of the base number of patrons or space that that particular part of the development can occupy. Is that fully completed for all aspects of the development?

**Mr SPOKES** — That work is still being finalised and needs to be in order for the development plans when submitted for endorsement by our planner. So that work is currently being finalised and the results of that will obviously be public at that point. And it has to conform with the broad parameters that have been laid down in the decision.

**Ms PENNICUIK** — So just following on from conversations we have already had here today: the actual final development plan is not known; there are still changes to be made, there are still those issues to be fixed?

**Mr SPOKES** — Nothing has changed from the decision of council on 7 February. It has approved the development plan as submitted, subject to the changes, the amendments, that were proposed by council at the time. The process is that it then needs to be submitted in accordance with those changes for endorsement by the senior planner, and that has not altered.

**Ms PENNICUIK** — If I could just stay on that issue. Certainly I was at that 7 February meeting and it concerned me that I was not sure that anybody in the room actually really knew what they were agreeing to, in that there were some verbal descriptions of what had been changed but there was nothing really in front of anybody for them to know exactly what was being agreed to in that meeting. That was a concern to me. You said earlier in your evidence that it is a transparent process, that it is locally controlled, and the council is committed to that, do you think it would be a good idea — and I say this in good faith — for the council to, with that in mind, re-exhibit for a period of time and take more submissions. Given the context of this — that there is so much disquiet, I believe justifiably, on this site — would it not be a good idea for the council to actually re-exhibit whatever it is that is finalised, with the small changes that are going to be implemented afterwards, for more public consultation, given that there is no appeal process and given what you are saying about transparency and local input?

**Mr SPOKES** — The council is committed to maintaining a high level of information to the public at all times during the process. We have acted on legal advice in regard to the planning process, which suggests that the strategy you have just outlined is not appropriate.

**Ms PENNICUIK** — In what way is it not appropriate?

**Mr SPOKES** — I can only reiterate we have taken advice about the way to manage the process, and we are acting according to that, and we will be insisting, both from the council's point of view and also from the developer, that a high level of information is provided. That is the basis of our position.

**Ms PENNICUIK** — Can you explain 'a high level of information'? What do you mean by that?

**Mr SPOKES** — Throughout this process, as I mentioned before, there have been at least 60 separate community consultation sessions that we have been involved in, probably significantly more —

**Ms PENNICUIK** — Yes, but if I could just interrupt, most of those were in the UDF process. Very few of them were in the most recent process.

**Mr SPOKES** — No, I do not think that is correct. Those conversations have been continuous, and we will continue to maintain that over the next period of time. There are clearly significant issues the public and the council are concerned about, and we know from experience the best way to deal with those is to deal with them openly with the community, and that is what we intend to do.

**Ms PENNICUIK** — If I could return once again to the Palais Theatre — and I know people are looking at the clock — I understand the process with Heritage Victoria is that the council makes an application to Heritage Victoria once there is an application for a planning permit that involves the Palais Theatre, and what concerns me is that at that stage Heritage Victoria could come back and say, 'Well, the Palais Theatre is an iconic building', and I know the council has received, via Unchain St Kilda, advice that part of maintaining that iconic status is that it remains a freestanding building. If Heritage Victoria agrees with that assessment and you have got in place a development plan that does not allow for that, that concerns me. Would you like to comment on what would happen then?

**Mr SPOKES** — That is hypothetical question that we do not confront.

**Ms PENNICUIK** — Or maybe not.

**Mr SPOKES** — It is quite clear in the tender document that all planning approvals are at the developer's risk.

**Mr KAVANAGH** — If I could ask: you said that the plans have changed since this artist's impression was done. How much have they changed? How different will it look from this postcard picture?

**Mr SPOKES** — I cannot comment on the precise level of change. All I can reiterate is that the issue of views is one that has exercised council's mind considerably. There has been a series of changes, including on the night the approval was given. There were certainly some — and we will be insisting that representations or visuals of that will be produced and be a part of the community information so that the public can see very directly what it will look like. But that is something for the future.

**The CHAIR** — David, I would like to thank you for your evidence today. There are a number of points on which information has been asked for, and we will follow up with that. I will perhaps put you on notice that there are still quite a number of issues for the committee, and we are going to receive other evidence. I put on the public record that the developer, Citta, has indicated that it will give evidence shortly to the committee. We look forward to perhaps talking to you further after that point, once we have heard that evidence from the developer.

The other point is in terms of materials, it may be helpful for the committee to look at some of the council's files over the next period. I am flagging with you now that I know that a number of committee members would like to examine some of the processes there. We will get back to you about that.

**Mr SPOKES** — Thank you, Chair. We appreciate the opportunity to have spoken with you this morning.

**Witnesses withdrew.**