

CORRECTED VERSION

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Melbourne — 20 May 2008

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Mr S. McMillan, managing director, Citta Property Group.

The CHAIR — I declare open the public hearing of the Legislative Council's Select Committee on Public Land Development. Today's hearing is in relation to the sale and development of public land — in particular, the proposed redevelopment of the St Kilda Triangle site. I welcome Stephen McMillan, managing director of Citta Property Group. All evidence taken at this hearing is protected by parliamentary privilege, as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council's standing orders. Any comments you make outside the hearing may not be afforded such privilege. Witnesses will be provided with proof versions of the transcript in the next couple of days. I understand, Stephen, that you are the only one speaking?

Mr McMILLAN — Correct.

The CHAIR — You will be able to make minor typographical or factual corrections and so forth.

Mr McMILLAN — I read that.

The CHAIR — Would you care to make some opening comments?

Mr McMILLAN — Yes.

The CHAIR — Then we will ask some questions.

Mr McMILLAN — I would like to firstly thank the committee for the opportunity to come along. I apologise for not being able to make it on the previous two occasions that you have met. I was overseas on business on one occasion and away on holidays with my family on the other.

I hope I can help the committee, but just as a preamble I would like to say that I am not in the policy business and nor am I a public administrator. I am a property developer, and I am not in the business of adjudicating or speculating on public policy. I am a participant in the game. I am not the umpire; I play the game. I see a definite division of roles between those who make the rules and policies and those who participate in the business of providing solutions or responding to those policies.

In my business I see our role as someone who looks for opportunities to create and deliver projects. We see our business as a very creative business in that we try to develop solutions for projects. It does not matter whether it is a road, a hospital, an office building or an entertainment complex, we are in the business of conceptualising and creating solutions to those sorts of opportunities and we try to do that to the best of our ability in accordance with the rules and policies that are determined by others. A typical process that we follow is that we hear around the traps of a potential project that is coming up or we are aware of it; the government has announced it and there is a press release; normally there is an invitation in some form of publication to register our interest, which we normally do; and then there will normally be a short-listing process and we work our way through those processes. In the types of projects we are talking about today, we are not the initiator of them; we are responding to someone else, whether it is a government, a council or an authority of some sort that is initiating a project. We see our role as creating solutions to those project opportunities.

I guess today we are talking about projects that have a public-private interface between the public sector and the private sector. I have been in the property development business now for 25 years. Fortunately I have done a lot of projects over the years — I have been in the game a long time — and I have worked on some of the most exciting and challenging projects that relate to this interface between public and private. I have been involved in a number of Sydney Harbour Foreshore Authority projects which are not dissimilar to the type of projects that we are doing here in Victoria. I was involved in the state bank building, which was a government-initiated project, in Sydney. For better or for worse, I have done two casino bids in Sydney — lost both of them. I was involved in the Olympic stadium bid for Lend Lease — lost that one, but we won the Olympic village, so it was a successful bid. Again, these are projects which were initiated by the state and to which we responded.

I was involved in two projects here in Victoria that were unsuccessful bids as well. That was Flinders Street station. Those of you who are old enough will remember that there was a proposal in 1988 to redevelop the air rights above Flinders Street station. I was involved in that bid when I was with Lend Lease. In 2001 and 2002 I was involved in the bid that came second, the consortium that came second on the Spencer Street station. I have also recently been involved in a number of these sorts of private-public partnership bids in Singapore, which has given me a pretty good perspective on the process as we have it here in Australia, and I was involved heavily in the Commonwealth Games and the Triangle. Currently we are also involved in the Carlton social housing bid that the Office of

Housing here in Victoria is doing. That is a bid that has not come to a conclusion yet. We are also involved in a number of PPP bids around Australia, including the Royal North Shore Hospital, which is another project we are bidding on at the moment.

It is with that perspective that the process on these sorts of government bids today is so much more rigorous than it was, say, 20-odd years ago. I think the interface between the public and private sector now is so much more sophisticated. There are higher levels of certainty being demanded by the public sector as to what they are getting, and I think the technical and other elements that sit behind that certainty now are of a so much higher standard, that the amount of information that we have to give and the quality of the resolution that we have to achieve in order to win a project is so much higher.

They are also very competitive. I mean, these consortiums get formed by a number of different companies and they are intensely competitive processes. All of that is wrapped in a process now which has high standards of probity. It is without exception in Australia now that a project, like the ones we are talking about, would certainly have independent probity officers and those sorts of processes.

If I draw the comparison between what I first experienced when I started off in this industry and what I experience today: they are chalk and cheese, the difference between the processes. It is really important from our perspective that when we go into these processes that they are well managed, they are professionally managed, and that we have faith in the process of managing the bid. It is absolutely critical. You would have seen in the *Australian Financial Review* last week the managing director of Leighton indicating that the bid costs on these projects typically are about 1 per cent of the total cost of the project.

The CHAIR — One per cent?

Mr McMILLAN — One per cent. That tends to be a very, very significant amount of money to invest in a bid. Someone sitting in my position really must have faith in the process in order to make that investment of money and time.

In terms of the Triangle process, my reflection on that is that it was extremely well managed by the council and the state. It was well organised. It was very competitive. There was the process of the 15 and then the short-listing progressively down to 3 and then the process of, I think, 2 at one stage and then a best-and-final-offers approach at the end. It was a very competitive process. I have respect for the two competitors who we beat out of the final three. They are highly professional and respected organisations and I am told that they put in very good bids.

The process was rigorous. The information we had to give, the quality of information and the rigour in which that was interrogated was of a very high standard. I believe the council and the state — it is not for me necessarily to say, but it is my opinion — were very well advised. They had high-quality legal advice, the probity officers were there. They had good commercial financial advice from Paradigm, which is a group that is run by Tony Jolly and Graham Cunningham, who have made a specialty out of advising the public sector side of these sorts of projects. They were retained by the council and the state and, from what I could see, they gave very good, sound advice.

On the design side there was a design panel created by the state and the council. It was chaired by Jim Holdsworth, who was the former head of the planning department of the City of Port Phillip. He is a very highly respected planning officer. It had Graeme Gunn on it, who is a pre-eminent architect within the profession and who is widely regarded and acknowledged as very skilful in these sorts of things, and Stuart Niven, who was the state's representative. I believe he is an employee in one of the departments but is a very distinguished urban design professional. From the evidence that I saw, the interaction that we had and the rigour with which we were challenged and which the debates occurred in the interaction that we had with that committee, I think it was of the highest standard.

The process was not rushed. I mean, if anything it took a long time. I think it started off in early 2005. I can remember that because I was living in Korea at the time. It started in early 2005 and I believe that we were finally awarded the contract in May 2007, or something like that.

It was a process that went over two years. It was highly structured. There were very definitive times at which we had to submit information, the way in which the different phases of it were very clear and well-considered. I think it was a very well-organised process. The officers who ran that process: the principal officer in the council was Rebecca Doherty, who was the project officer who ran it. I have a very high regard for her. She is currently on

maternity leave and her place has been taken by Anita Lange, who is the council officer now responsible for administering the contract. Both have been very professional.

In terms of the process the UDF and the DPO were absolutely front of mind when we were formulating our response. We were absolutely aware — we were made aware; it was emphasised to us — that satisfying the objectives of the UDF and the development plan overlay were pre-eminent requirements of our bid. The other element that was continually stressed to us in this process was that there was to be no public funding and that the public was not going to be taking any development risk. It was within that context that we formulated our bid. It was an adherence to the policy framework and an absolutely very clear directive that there were to be no public funds and the public was not to take any development risk or commercial risk.

With that as a bit of a preamble, I hope that gives you a bit of an introduction to how we approach these sorts of projects. I would be more than delighted to answer any questions you might have.

The CHAIR — Stephen, I thank you for that overview. I think it is actually very helpful for us to have that step-wise historical sequence too. I might start with a very basic question. It is not clear publicly precisely what the size and scope of the project is. There is not as yet a final set of plans, as it were. You are due to submit final plans for planning approval, as I understand it. Do we get to see those at some point very soon? What is the time line on this?

Mr McMILLAN — In May last year the scheme that was selected was displayed. There were a number of — —

The CHAIR — But that is not a final — —

Mr McMILLAN — I am just going to step through it. There were a number of community consultation processes that occurred during that period up until we submitted our formal development plan application in October. That was then exhibited in November and December. There was an initial meeting in December and then subsequent meeting in February.

As a consequence of those meetings and the decisions that were made at those meetings, we had to go back and rework our development plan so that it is brought in line with the decisions that were made by the council. That is what we have been doing. There were a couple of decisions. There was some reduction in different areas. There was the deletion of a number of elements. There was the creation of the space for a cultural facility. There was the adjustment to the shadow diagram from 10 o'clock to 11 o'clock, and there was a reduction in the number of different spatial allocations. We have had to rework all of that. We have been working through that process.

We are now at the position where we are very close to finalising the revised development plan. We are hoping to be able to submit that to the council in the next couple of weeks. In fact I saw a draft of it last week. I am down today, so I am going to be going through it over the next day or two.

The CHAIR — Do we get, as it were, a preview of the floor area of that?

Mr McMILLAN — It has not materially changed. The commercial floor space in the project is approximately 43 800 — three significant figures — or something like that. That has been consistent from the day that we were awarded the contract. There has been some adjustment.

The CHAIR — Car parking?

Mr McMILLAN — Car parking, as a consequence of some of the changes, there has been a bit of a remix. As a consequence of some of the reallocation of space, according to the formula that has been approved — we remixed the number — I think it is about 980 to 1000. Within 10 or so spaces, that is the number that is there. The development plan does not actually specify a fixed number; it specifies a formula by which we calculate the number of cars that we have to put in our permit application.

The CHAIR — That is tied to?

Mr McMILLAN — It is tied to the different types of floor space — for instance, number of cinema seats, number of restaurant tables and chairs, different types of square metres of shops, square metres of other types of things.

The CHAIR — Commercial or whatever.

Mr McMILLAN — Commercial facilities or whatever. There is a formula. It is quite complex.

The CHAIR — Is that public?

Mr McMILLAN — Of course; it is in the — —

The CHAIR — That has not changed at all?

Mr McMILLAN — No, that formula and that way of calculating the requirement was approved by the council. It has not changed.

Mr TEE — Can you remind me what is the public open space component of the project?

Mr McMILLAN — When we submitted the development plan, I believe it was about 16 300 square metres of open space on the site. It was about 16 300, and the council resolved on 7 February to increase the requirement for that to be 18 000 square metres. That is one of the things in the plan that we will be resubmitting. We have had to rejig the allocation of space to create that 18 000 square metres. The total site area is around 25 000 square metres. Of the site area it is 18 000 over 25 000 — I think it is around 65 to 70 per cent, somewhere in that range.

The CHAIR — That is the footprint, as it were?

Mr McMILLAN — Correct. The total size of the site I think is 25 000 square metres and we had to create open space of 18 000 square metres, and that space is handed back to the city and the state for their ownership. That was a requirement in the original bid, that the public spaces that were created were to remain in public ownership.

Mr TEE — You have indicated, I think, that we have not seen the final plans yet because those plans are subject to further considerations detail I think in the council's decision. There have been some community concerns about aspects of the project, and I am wondering if you could just briefly outline how the scope of the project has changed in response to those concerns?

Mr McMILLAN — I think there was concern about the total quantum of space that was allocated to what were technically called nightclubs but were live performance venues and those sorts of facilities. I think when we first submitted it was around 5000 square metres and there was significant comment about that and concern, and through the discussions we had with the community — and we met with a number of community representatives during the exhibition process and many of them are here today, I notice, in the gallery; so we had a number of discussions — we listened to their concerns and we had discussions with the councillors as well, and that was I think reduced down to 3000 square metres. That was the approved number in the plan. There was also concern about the quantum of shops and that was scaled back from 23 000 back to 19 000 square metres.

There is a block of apartments on the Upper Esplanade called Mandalay which had a building placed in front of it. There was some concern about that, especially from the Mandalay residents, that they were going to lose some of their aspect, and as a consequence of that that was deleted. There was also an adjustment made to provide a site for an additional cultural facility adjacent to the forecourt of the Palais Theatre. There was also some concern expressed about the views from the Upper Esplanade. There was a section of about a lineal dimension of around 50 metres of the Upper Esplanade where there was concern about the views, and we have done a number of things to enhance the views to the foreshore from that part of the Upper Esplanade.

There were also some additional facilities requested, such as a tenpin bowling alley to be added into the mix and I think some sort of interactive children's play area. I think that is it. There could be one or two other things but I do not think they are material.

Mr TEE — You indicated that you have been involved in some community consultation and made these changes; has that gone some way to addressing some of those community concerns?

Mr McMILLAN — I think you are asking the wrong person. We certainly tried to address the concerns, but as I said, we are not in the business of adjudicating whether we have or we have not. I think that is up for others to say. We certainly tried to do our best within the context of the structure of the deal.

Mr TEE — Finally, you indicated that the UDF I think was a pre-eminent consideration and that has some 19 or 20 guidelines; do you think that the final model as currently proposed meets those guidelines?

Mr McMILLAN — We certainly set out to. It is my belief that we did, but as I said to you in the beginning, that is not my role in life. That is for other people to judge. We certainly aspire to do that, and we see that in winning these sorts competitions if you do not satisfy the policy that is being established as a framework for the project you do not expect to win it. That is part of the beauty of capitalism. In these competitive situations you have to satisfy the objectives. Obviously in choosing our scheme there were a number of people who thought we did. But there are others who do not. Again that is not a decision I could go into.

Ms PENNICUIK — You mentioned before that the development plan was not finalised. I understood that it was scheduled to be presented to council at a planning committee meeting last week.

Mr McMILLAN — Was it? As I said, it is in draft form, it is in our system and we are within weeks of putting it to the council. I do not know where you got your information from, and I am not disputing it.

Ms PENNICUIK — Are you expecting several more weeks?

Mr McMILLAN — I think we are probably a couple of weeks away from getting it submitted, yes.

Ms PENNICUIK — So is that early June, mid-June? When are you expecting it?

Mr McMILLAN — A couple of weeks is a couple of weeks. What is the date today? I am expecting it within a couple of weeks.

Ms PENNICUIK — It is 20 May.

Mr McMILLAN — May the 20-something, is it?

Ms PENNICUIK — Mr McMillan, one of the issues that the community has been raising is the lack of public funding, and you mentioned before that there would be no public funds to support this development, which is actually on state Crown land. So it is not a usual development in that it is not on commercial land. It is not land that you have purchased; it is actually Crown land. Is that unusual in your experience — for example, the Sydney Harbour development is to have no public funding; it is on a PPP, which is presumably a partnership.

Mr McMILLAN — This is not a PPP as such. This is a project that has a public-private interface, but it does not fall into a PPP. All the commercial — —

Ms PENNICUIK — How would you describe it, Mr McMillan?

Mr McMILLAN — I would say it is a mixed-use development that has to be self-funding. It is on land that is owned by the state, and the land is administered by the council.

Ms PENNICUIK — I am asking: is that unusual, for a development to occur on Crown land to have no input from the Crown?

Mr McMILLAN — Is that unusual? To be honest — —

Ms PENNICUIK — In your experience.

Mr McMILLAN — I have done a lot of developments over the last 25 years, mainly on private land, but I have done many on land that is owned by some form of public enterprise, whether it is a statutory authority or a council or a state government or a commonwealth government. To be honest, I do not think it is unusual, no. But others might. This is a decision that is made by other people — whether the land should be developed; it is not the decision that I have any control over or really have an opinion about other than it is a decision that was made by the elected council and the elected state government. It is not something that I really have a strong opinion about, to be honest.

Ms PENNICUIK — Mr McMillan, it appears that the community has been told that in order to have the Palais refurbished and upgraded — which I think everyone does agree; it needs some upgrading, and for that Citta

will be putting \$20 million into that, and some other, which I will ask you about in a moment, \$45 million worth of public benefit — that the price the community has to pay for that is this scale of development. Would you agree?

Mr McMILLAN — Yes, that I think it is factually correct.

Ms PENNICUIK — Could you tell the committee the details of the \$20 million refurbishment, because there are no details available for that, and what advice Citta has received to enable this costing, and if that advice is available publicly?

Mr McMILLAN — We provided in our bid and have subsequently provided detailed costings and have undertaken detailed costings. That is information that we have provided to the council and to their advisers. So that information — we have done exhaustive work on it. Since we took over management of the Palais Theatre in August last year — and Neil Croker, who is the manager of the Palais is here — we have come to understand the building a lot more.

Neil has been having great success in getting concerts and promoters to hire the facility, although it is in very poor condition — probably a little bit worse in some spots than we had thought. We now have a very thorough understanding of what we have to do to get it back to the standard which we are obliged to do. After the submission we did a considerable amount of work to understand the work that we have to do to get it back. We have very detailed analysis on the process and the costs and the design of what we intend to do at the Palais, and what we are required to do at the Palais. We have provided all that information to the city and to the state.

The situation with the Palais is that when we bid it, we based our business case on the Palais having about 60 to 70 performances a year, doing what it does: being a venue for rock concerts and related similar sorts of events. We believe that we are going to meet that target. What we have already achieved would indicate that is a pretty good estimate of where I think we will get to on full commercial paying in the Palais. We had the Kiev Ballet, and we have had comedy nights down there. We have had any number of things, so the evidence is there that the appeal for the facility when it gets restored will meet the commercial objectives that we set as part of it.

Ms PENNICUIK — Mr McMillan, I am interested in the actual cost of refurbishing and the difference between that and whatever commercial add-ons you may need to do to the building for your business plan. Can you tell us who did this assessment for you?

Mr McMILLAN — Yes. Who did that for us? We have had a number of heritage architects preparing plans. Lovell Chen is the firm of architects — is that correct? — whom I believe are the pre-eminent heritage architects in this city. So we have prepared plans. We have also had a number of cost estimates prepared both by Bovis Lend Lease, which is our preferred contractor on the project, and by our quantity surveyor Slattery. We have had very detailed analysis.

My colleague Mick Caddey is here today. He was formerly the managing director of Bovis Lend Lease. He has a very detailed understanding of construction processes and construction estimating. We have helped in that preparation. That is what we do for a living. We estimate what things cost, and we do that taking professional advice from building contractors and quantity surveyors and using our own experience. It is a combination of those.

My team and I have had a lot of experience in heritage work. The Commonwealth Games had a significant heritage component. We did the Channel 7 headquarters in Sydney just recently, which was a significant heritage project. We are doing another one called Revy, which is another heritage — we like doing heritage work; we understand it. It is not easy, but that is what we do.

Ms PENNICUIK — I appreciate all that, but I think you would appreciate too that what happens to the Palais is of great interest to the community, not just the local community but many people throughout the Victorian and Australian community. Would you be prepared to release that information?

Mr McMILLAN — I do not, in principle, have a problem with that, but all the information that we provide is provided under the terms of the contract, which is confidential. It is a tripartite contract, so we provide that information in confidence to the state government and to the City of Port Phillip. In principle I have no objection to this committee having access to that information, but I am not at liberty, or it is not my decision to release that information. That is information you would have to seek from the council, because it is a tripartite contract. It is the state government, the City of Port Phillip and ourselves all on the contract. The information we

provide is confidential to them, and that is a decision that you should — it is entirely up to you of course — pursue with them.

Ms PENNICUIK — You were mentioning before about certainty and process, and I think from the community's view they do not have the certainty, and they have certainly been locked out of the process, so I am just trying to get here — because that is one of the fundamental issues, what goes on at the Palais. So that is why I am talking about that.

Mr McMILLAN — I respect that entirely.

Ms PENNICUIK — Is Citta still claiming that there will be \$65 million worth of public benefit?

Mr McMILLAN — When we went through the costing of the different elements — the costing of the restoration, refurbishment of the Palais plus the additional underground car spaces, plus the creation of public open space and a number of other things, the different public facilities — —

Ms PENNICUIK — Could you, for the record, outline what constitutes that benefit?

Mr McMILLAN — I just did. It includes the restoration of the Palais, a creation of public open space, the additional cars that we have to provide, because there are 260-odd cars on the site now, and we have to put those cars underground. And we are also providing space for Linden and a TAFE college, and there are some decontamination costs in that as well, so — —

The CHAIR — How much were the decontamination costs?

Mr McMILLAN — The decontamination costs are still to be determined. I think in that estimate that you are referring to they might have been around \$15 million or something like that. I could stand corrected on that, but that is approximate. But on decontamination, we are doing detailed studies on that at the moment, and we are having discussions with the regulatory authorities on the optimal regime for the decontamination and remediation of the site, so that number is — —

Ms PENNICUIK — Fifteen has been the figure you have — —

Mr McMILLAN — Correct, yes, that is what I said, and I would stand corrected; I did not bring that breakdown. And again that is very detailed information that we have provided to the city and the state. That is, again, done in confidence, but if you want that information, you should ask them.

Ms PENNICUIK — Just regarding the TAFE College, whose idea was it to put the TAFE college in there?

Mr McMILLAN — Ours.

Ms PENNICUIK — Because TAFE colleges are publicly funded educational institutions generally.

Mr McMILLAN — Sure.

Ms PENNICUIK — Not usually provided by the private sector on a foreshore development. It is very unusual.

Mr McMILLAN — Okay. Is it?

Ms PENNICUIK — Is the state government providing any funding for that?

Mr McMILLAN — We are providing the space, but we approached it from two different dimensions: one, to have an educational element to what we were doing we thought was pretty important, and that is why we initiated the idea. And it sort of came out of some workshops that we did with some of the different businesses that we are proposing to put on the site. If you are in the hospitality industry these days, it is getting staff, training staff, and all that is a massive issue, so anything that we can do that has an educational dimension to it and assists the tenants in their business we thought was a positive thing to do.

I was involved in a number of projects when I was an executive at Lend Lease where we had training facilities on site. These were shopping centre-type facilities where we had an on-site training facility, and we did that in our construction activities as well. So I think it is situation normal, sort of, to have an educational dimension to what we are doing, and that was sort of where we came to. It was part of our pitch, people thought it was a good idea — and William Angliss thought it was a good idea as well, so that is why they wanted to be involved. There is also a community angle to it. They want to do not just professional training, but if you want to improve your cooking skills or your wine-tasting skills or any other of those sorts of skills that people have as hobbies, they are going to be offering those sorts of courses as well to the broader community, and they saw a business opportunity in that.

Ms PENNICUIK — Yes, I appreciate there might be a business opportunity, and it is good to have that sort of training available, it is just whether it is appropriate in this particular site, which is covered by an urban design framework which does not mention educational facilities. It also does not mention any sort of extensive retail; it also does not mention extensive restaurants; it certainly does not mention a supermarket or a bowling alley, although that could perhaps be under entertainment. I am just wondering whether you can explain, Mr McMillan, how you feel that the development plan, as we are aware of it, because we have not seen the final development plan, actually complies with the UDF, because that is not the view of many in the community.

Mr McMILLAN — How do I feel? I feel it does — —

Ms PENNICUIK — Can you explain how it does?

Mr McMILLAN — Of course I believe it does. That is my job. I would not be putting it there if I did not. But that is not up to me to decide. That is not my job. My job is — —

Ms PENNICUIK — But, with respect, you said — —

Mr McMILLAN — Sorry, Ma'am, could I just — —

Ms PENNICUIK — You said it was the pre-eminent document that guided your thinking, so you should be able to explain to the committee how it complies — for example, the UDF says that the view lines from the Upper Esplanade should be protected and enhanced. That does not appear to be the case, certainly on development plans we have seen so far.

Mr McMILLAN — It would be my opinion that the view lines are significantly enhanced by the creation of the public open space that sits on top of what we are constructing and is contiguous on the same level as the Upper Esplanade. We have always acknowledged that there are about 50 lineal metres of the Upper Esplanade, which is around 600 or 700 metres long, where you could argue, as you are and as opponents of the project are, that somehow they are being compromised. They are certainly being changed. But there are several hundred lineal metres of other publicly accessible space where views are enhanced. I do not want to verbal the design committee, but this issue was debated ad nauseam and they felt — I think it would be a fair summary as I understood it — that the additional viewing areas and the additional views that were created more than outweighed any perceived loss of view from that short part of the Esplanade. We come up with the best design we can within the constraints, and then it is up to others, such as the design committee, the planning officer, the elected councillors, and the DSE — all of these are the people who make the decisions, not me. How I feel is not that relevant, to be honest.

Ms PENNICUIK — Mr McMillan, you mentioned that during the tendering process the UDF was the pre-eminent document. Was it ever said to you by council or anyone on the St Kilda's Edge Committee that there were other objectives, such as financial and commercial objectives, that needed to be met, over and above the UDF?

Mr McMILLAN — I am not entirely sure what you mean. We would have our own financial objectives. The pre-eminent financial objective was that there was to be no public funding to the project. I said that in my opening remarks. I cannot recall anything other than that. That was certainly what was in our mind.

Ms PENNICUIK — I have just one more question before I let Mr Kavanagh have a go. It is about the public open space, which you said has gone from 16 000 to 18 000 square metres. How much of that public open space is free open space that is not a footpath, a laneway or something similar?

Mr McMILLAN — I am happy to provide that to you. I think the actual green garden area component is around almost 10 000 square metres. I am happy to give that information to you, it exists, but I do not want to give you misleading information today. I am happy to send it. I assume I send it through Mr Willis; is that right?

Ms PENNICUIK — Thank you.

Mr KAVANAGH — Mr McMillan, most of the questions that I was going to ask have already been asked. On the nightclub you said that in the final plans the floor space for the nightclub has been reduced by 40 per cent; is that right?

Mr McMILLAN — Correct.

Mr KAVANAGH — What are the numbers of patrons now?

Mr McMILLAN — I am looking at my colleague Simon here: it is 3000 patrons.

Mr KAVANAGH — And that is down from what?

Mr McMILLAN — I think it was 5000 — 5300. That is a theoretical maximum number of patrons, calculated on a density ratio-to-floor space. The nightclub facility that used to exist there, the Palace Nightclub, I think, had a capacity of 1880. Just to give you a sense, the previous existing function was 1880 and currently, as a consequence of the decisions that were taken by the council, it is now 3000. These are in a number of different facilities, including a band room and two other facilities.

Mr KAVANAGH — So that is over three facilities; is that right?

Mr McMILLAN — It is over four facilities, the most significant being a band room for, I think, 1200 patrons. It is a live performance venue. It is technically a nightclub under the planning controls, but it is more of a live performance venue where rock and roll bands perform.

Mr KAVANAGH — There will be a bowling alley, will there?

Mr McMILLAN — I believe so, yes. We have a number of different bowling operators. They are all talking to my colleagues. Simon is managing the leasing process and all the major names are wanting to go there.

Mr KAVANAGH — Just on the views from the Esplanade — —

Mr McMILLAN — Upper Esplanade.

Mr KAVANAGH — Upper Esplanade — thank you. You said that the views will be improved in a lot of places; is that right?

Mr McMILLAN — Well, certainly the views from parts of the site will be significantly improved because we are creating a platform at the elevation of the Upper Esplanade, of which 18 000 square metres come across the top of the site. When you are on that elevated deck, which is about 7 metres above Jacka Boulevard but at the level of the Upper Esplanade, your views to the foreshore from that area will be significantly enhanced.

Mr KAVANAGH — You said that for about 50 metres of the Upper Esplanade, views will be less than they are now?

Mr McMILLAN — Correct.

Mr KAVANAGH — What will people see in those 50 metres?

Mr McMILLAN — I think in a couple of spots you will be able to get a slot view down to the Catani Arch, which sits on the foreshore. As a consequence of discussions that we have been having with the council and the community we have repositioned some stairs so that as you are walking along the Upper Esplanade you will look down through the stairs and you will see the Catani Arch, but it is a very framed view of that part of the foreshore.

Mr KAVANAGH — But for that stretch of 50 metres people will mostly see the development?

Mr McMILLAN — No, you will be looking onto the open parkland that has been created on top of the development and the horizon beyond. I think the key issue that was in dispute on that was the actual foreshore — that is, the beach and the Stokehouse. It was that view from those particular spots that people were not happy about losing. You will still see across the top of the deck the garden and out to the horizon.

Mr KAVANAGH — Thank you very much.

The CHAIR — I just want to return to a couple of points raised by my colleague Ms Pennicuik. It seems that in the bidding process the heritage responsibilities of the state government and arguably the responsibilities for decontamination of the site have been in effect passed over as part of the contract to your group. Do you think the final result would have been very different if the state government had accepted some responsibility for the heritage and the future of the Palais itself and undertaken the decontamination processes on what is after all public land that it is responsible for?

Mr McMILLAN — I think that is probably pretty self-evident, but they were not the rules. It is a hypothetical question. I really cannot answer it, but you can draw your own conclusions. But they were not the rules. The rules were that there were to be — the rules were, are — —

The CHAIR — In effect you are being asked to absorb the decontamination costs of prior usage of the site?

Mr McMILLAN — Correct, we were.

The CHAIR — Whereas with state government land arguably the state government would expect, for example, a private land-holder to face up to their responsibilities for contamination that has occurred on land?

Mr McMILLAN — It is not uncommon for a landowner to sell land and the obligation to decontaminate, remediate to be passed to the new purchaser and not the actual polluter. The case here is that, yes, it is land that was in public ownership and the costs, obligation, risks of the remediation have been transferred to us. Yes, that is quite true.

The CHAIR — I want to be quite clear. I accept your point that there is a legal arrangement between you, the state government and the City of Port Phillip.

Mr McMILLAN — Yes.

The CHAIR — And you are not entirely able to wriggle away from one part of that contract?

Mr McMILLAN — We would never want to wriggle away from it.

The CHAIR — What I am getting to is that I want to be very clear that you have no objection to the release of the material and assessments on the contamination and you have no objection to the assessments on the heritage examinations?

Mr McMILLAN — To your committee I have in principle no objection to the release of that information.

The CHAIR — No, I am just flagging that I intend to now ask the state government to provide or to release that on the basis of the fact that you have indicated you have no objection.

Mr McMILLAN — To this committee.

The CHAIR — Right; that is actually helpful. In terms of the UDF I want to return to where Ms Pennicuik was also questioning. You have indicated that you were trying to align the bid, as it were, with the UDF and the other development overlays that are in existence? Do you think that the City of Port Phillip's process for developing the UDF in the first instance fully captured what was required?

Mr McMILLAN — That is not my area of expertise. I am not an expert in the formulation of public policy or the formulation of these sorts of plans. I honestly have no expertise in what you are saying. I have had a lot of experience in different jurisdictions. It seemed like a very professional document to me, very thorough. It was not prescriptive numerically; it was more discursive. But that could be absolutely the right thing to do. I cannot

draw a conclusion on whether it is good policy — well-written, well-conceived — or the process that arrived at it. To be honest I did not participate in it. I know many of the people in this room did and I am sure they would defend it.

The CHAIR — I also want to ask a question about the involvement of the former member for Albert Park, John Thwaites.

Mr McMILLAN — Yes.

The CHAIR — Have you had meetings with him on these matters?

Mr McMILLAN — I have never met Mr Thwaites.

The CHAIR — You never met him?

Mr McMILLAN — No.

The CHAIR — Could you indicate to me whether you are aware of any involvement in this process by Mr Thwaites?

Mr McMILLAN — No, I have no knowledge of that, no — none.

Mr TEE — Drawn a blank.

The CHAIR — I am very happy to have him indicate again the facts.

Mr McMILLAN — What is that?

Mr TEE — He has drawn a blank again.

Mr McMILLAN — Sorry, am I missing a joke here?

Mr TEE — No; he has tried this line of questioning and every time he has got nowhere.

Mr McMILLAN — Okay.

The CHAIR — It is your question.

Mr TEE — Just a couple of things. I know you have time constraints, and thank you for the generous allocation of your time. In relation to the issue that has come up a couple of times about there being no public funding, and the issue that Mr Davis raised about you funding the decontamination and the heritage issues, it seems to me it is not quite an accurate description of what has occurred, and that what in essence you have been given is access to what is, on any definition, prime land and from your perspective you would have to acknowledge that this is a large site?

Mr McMILLAN — Yes.

Mr TEE — It is ideally located next to the waterfront. From a developer's perspective it almost does not get any better than that. In terms of a contribution — —

The CHAIR — You should be a salesman!

Mr TEE — It is an obvious statement. In terms of a contribution you have to admit that it is not a situation where you get dollars, but you have certainly got nothing from having been provided with access to that site. Would that be a fair summation?

Mr McMILLAN — Sorry?

Mr TEE — What I am saying is, yes, there have been no dollars from the state government?

Mr McMILLAN — Yes.

Mr TEE — But equally you have been provided with access to a sensational opportunity?

Mr McMILLAN — Yes, true. It is a sensational opportunity where we have onerous obligations on us in terms of — —

Mr TEE — Yes, as you would expect, having being provided that opportunity.

Mr McMILLAN — Yes, correct. But it was a very commercially rigorous process that arrived at the position we are in today, and it was competitively bid. I think the commercial obligations on us are quite onerous and the policy objectives are quite onerous as well.

Mr TEE — The other issue, of course, is that you can imagine a situation where, if public funding was provided for what is a commercial venue to provide shops and nightclubs, there would be anger from taxpayers, who would obviously prefer that money to be spent on schools and hospitals?

Mr McMILLAN — I am not a taxpayer in Victoria.

Ms PENNICUIK — I have a few more questions for you, Mr McMillan. One of the recent developments that has come to light — and it is not meant to be a pun — is the alteration of the shadowing from 10.00 a.m. to 11.00 a.m. with the winter solstice particularly in relation to the Nolan building.

Mr McMILLAN — Yes.

Ms PENNICUIK — This is contrary to the Port Phillip planning scheme. Could you tell me how that came about?

Mr McMILLAN — I think this was a part of the decision-making process of the council in the discussions it had leading up to the decision on 7 February. But my understanding is that a number of the community groups that were opposed to the development were actually in favour of that adjustment. So I do not understand — sorry, I am not fully aware of exactly how it came about but it certainly emerged — —

Ms PENNICUIK — Or whether it came from you or from the council; was it your suggestion or its suggestion?

Mr McMILLAN — That whole idea predates our involvement. There was an ongoing debate amongst the community that the 10 o'clock shadow on 22 June should actually be less onerous. That was a debate that predated our involvement. In fact the first time I met a couple of the community members who were opponents of the project as it currently is, they thought that was an inappropriate guideline. It is not something that it is in the planning instrument. It is a policy, not a — —

Ms PENNICUIK — But it is one that has been imposed on all developments on the foreshore.

Mr McMILLAN — You would be more aware of that than I would be.

Ms PENNICUIK — I am aware of it.

Mr McMILLAN — That is what I just said.

Ms PENNICUIK — That is why I am asking you about it, because it is an informal change to a formal requirement. You appreciate, Mr McMillan, that the community is quite concerned about the lack of transparency in this process, from the community's perspective. When the UDF was signed off, in my view an unwise decision was made to take away third-party appeal rights. Part of that was that the development would fit with the UDF. You know and you have mentioned that there are people in this room who do not believe that. There are many people in the community who do not believe that. Many of the people who do not believe that, sat through the process of developing that UDF. It is difficult to reconcile your view that it fits with the UDF with their view, those who developed the UDF, that it does not fit with the UDF. We are stuck with that.

I am wanting to know whether in fact you had any discussions with the Premier, the planning minister or any other government MPs about this project at any time.

Mr McMILLAN — Prior to the award of the project, no. I shook the hand of the Minister for Planning when he announced the project, which he announced quite enthusiastically. I had met the minister on a number of occasions in relation to the Parkville project, but I personally do not know him. My colleagues know him better than I do. I have never met the Premier. I never met Mr Thwaites. I have met Mr Foley, who is the local member, on one occasion informally. My experience in these competitions and these sorts of processes is that we are better off just going about trying to do our job to the best of our ability. Meeting politicians and trying to convince them one way or another is pretty fruitless. We just do our job.

Ms PENNICUIK — Mr McMillan, I am just wondering whether the changes in interest rate regime and changes in the economy and the commercial outlook have affected the project in any way?

Mr McMILLAN — There is no recession in Australia. In the retail industry it is still getting good growth; in the restaurant industry there is still growth. Hotel occupancies and hotel rates in Melbourne are fantastic. I do not believe the economic issues that have occurred over the last few years are material to the long-term viability of the project, if that is the implicit thing in your question.

Ms PENNICUIK — I have got another question, Mr McMillan, about the Palais, if I could.

Mr McMILLAN — Sure.

Ms PENNICUIK — The development plan envisages that the Palais be pretty well enveloped on two sides by buildings. I know there is a lot of concern in the community, which I personally share, about the status of the Palais as an iconic building on the foreshore, with which really there is nothing else to compare it around Port Phillip Bay or anywhere in Victoria. Part of that status is the freestanding status that it has now. Certainly there has been heritage advice that that should be maintained.

Mr McMILLAN — Heritage advice from whom?

Ms PENNICUIK — I think it was Mr Lucas.

Mr McMILLAN — Yes, I know Clive Lucas. He is probably the pre-eminent heritage architect in Australia. He is from Sydney and he specialises in 19th-century buildings in Sydney. He is a fantastic architect, a highly eminent architect.

Ms PENNICUIK — I did not want to get stuck on Mr Lucas. I am talking also about a community perception that the building is going to lose its status by being basically enveloped. I am wondering whether there is scope for that to not happen or to be done in a less overwhelming way.

Mr McMILLAN — As part of the process of the competition we had to submit our plans to the council and the state's heritage consultant during the competition, and they reviewed those. Obviously the council or someone got advice that we were complying with the heritage plans that had been done for the building and we were complying with the heritage objectives of the UDF. We have been having ongoing discussions with Heritage Victoria. At this stage I believe that what is being proposed complies with the heritage constraints that are on the site.

The CHAIR — I have one further brief question. It is the question of Caroline Shahbaz and whether you have had any dealings with this consultant who has been employed by the City of Port Phillip — the so-called white witch. Has she had any involvement with this project that you are aware of?

Mr McMILLAN — Not that I am aware of.

The CHAIR — Do think she has had any influence on the City of Port Phillip?

Mr McMILLAN — Now you are definitely asking the wrong person.

The CHAIR — Have you noticed any improvement at the City of Port Phillip under her influence?

Mr McMILLAN — Good question.

Ms PENNICUIK — I could follow up by asking how closely you worked with the CEO of the City of Port Phillip, either separately from his role as the St Kilda Edge chairperson. Have you had many meetings with him?

Mr McMILLAN — Up until the point where we had been awarded the contract, I had met him on three or four occasions in very formal settings and had not had a relationship with him as such — I had met him. Since we have been awarded the contract, obviously I have had informal, formal, commercial and all sorts of interactions with him. To be honest — and I have met a lot of council officers — I think he is an outstanding executive and he has been terrific. I think the council generally appears to be a very well-run organisation and certainly the officers we deal with are highly professional, and we hold them in very high regard.

The CHAIR — Thank you. I appreciate your making yourself available today and your answers, and we will certainly follow up with a couple of those matters.

Mr McMILLAN — Thank you very much.

Committee adjourned.