

# CORRECTED VERSION

## SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Melbourne — 22 May 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: Mr A. Walsh

### Witnesses

Mr T. Theophanous, Minister for Major Projects, and

Dr A. Smith, deputy secretary, capital, Department of Innovation, Industry and Regional Development.

**The CHAIR** — I welcome Minister Theophanous, Minister for Major Projects, Minister for Industry and Trade and Minister for Information and Communication Technology. Could you make a brief statement, and then we will ask some questions?

**Mr THEOPHANOUS** — Thank you, Chair. I am the Minister for Major Projects, as you indicated, in the context that I am appearing before this committee. I commenced as Minister for Major Projects on 1 December 2006. I attend before this committee in my capacity as a minister of the Crown. On 22 April I received a letter from the committee inviting me to attend this hearing and give evidence in relation to: the role of the Department of Infrastructure, Major Projects Victoria and my role as minister in broad public land development issues; and specific issues raised in evidence received to date by the committee. As of 5 May 2008, machinery-of-government changes see Major Projects Victoria shift to the Department of Innovation, Industry and Regional Development. Therefore my responses will be limited to the role of Major Projects Victoria and my role as Minister for Major Projects in broad public land development issues. My answers will also reflect the government's position to date on this committee's terms of reference as outlined by the Attorney-General in his letter to the committee dated 24 September 2007.

The role of Major Projects Victoria and my role as minister in public land development, MPV is the government's leading provider of project management services for large-scale, unique property development and construction projects. These projects sit outside the more routine capital works, such as roads and public housing, and are allocated to MPV by the Premier. MPV provides the following services to government through its three groups: project management, property and development and Partnerships Victoria. The project management group is responsible for the delivery of projects, mostly on behalf of other departments. The property and development group manages the redevelopment of surplus government property, including arranging for the sale of the land in accordance with government policies and guidelines and joint venture arrangements with the private sector. The Partnerships Victoria group offers significant experience and expertise in the area of public-private partnerships. It delivers within the government's Partnerships Victoria policy. Major Projects Victoria utilises the Project Development and Construction Management Act 1994 for the delivery of some of its projects. MPV's tasks vary depending on each individual project.

In terms of government policy relating to the sale of government land, all purchases, compulsory acquisitions and sales of land in excess of \$250 000 undertaken by government are subject to compliance with government policy titled Government Policy and Instructions on the Purchase, Compulsory Acquisition and Sale of Land. This is a policy that all government agencies and authorities must comply with in employing a consistent best-practice approach to their property transactions. I understand the Department of Treasury and Finance in its written submission has forwarded the committee a copy of this policy. This concludes my witness statement. I am happy to take questions.

**The CHAIR** — Minister, I want to start with a procedural matter first, and to indicate the committee has on a number of occasions sought to meet with Mr Sweeney, the head of Major Projects Victoria, and on each occasion has been blocked from having access to Mr Sweeney. We think that — or I certainly think and the committee has sought his attendance — he certainly he is the one who is most knowledgeable about the development of many tracts of land under Major Projects Victoria responsibility. Whilst we are appreciative of having you here, I would seek from you a commitment that, if the committee further seeks Mr Sweeney to attend, you would accede to that.

**Mr THEOPHANOUS** — Chair, first of all let me say that you have had access to the department. The secretary of the department has attended and given evidence before the — —

**The CHAIR** — And could not answer many questions because they were of a detailed nature.

**Mr TEE** — They were outside the terms of reference.

**The CHAIR** — No; that was not the reason that he gave at all.

**Mr TEE** — It was the reason. He said — —

**Mr THEOPHANOUS** — Howard Ronaldson, the secretary of the department, has attended and given evidence in relation to a range of questions that were put to him, and he identified what was inside the terms of reference, and therefore that he was capable — —

**The CHAIR** — And there were matters of detail that he could not answer because he is not across those details, and we sought briefings with Mr Sweeney, who could answer those questions.

**Mr THEOPHANOUS** — My understanding is that on all of the matters of detail that you referred to, he indicated to you that they were outside the terms of reference.

**The CHAIR** — No; that is not true.

**Mr TEE** — That is right. It was true. Read the transcript.

**Mr THEOPHANOUS** — My simple answer to you is — —

**The CHAIR** — You will block the appearance of Mr Sweeney?

**Mr THEOPHANOUS** — You would not ask the parliamentary secretary to appear before your committee to answer questions in relation to what is ministerial responsibility, so I do not know why you would want somebody down the chain to appear before the committee when you have got the secretary of the department — —

**The CHAIR** — Because he has got the knowledge and information that you or the secretary do not hold.

**Mr TEE** — It is a matter for the minister to decide who is going to best answer the committee.

**Mr THEOPHANOUS** — You received the secretary of the department. He gave you evidence. The central issue here, Mr Davis — with the greatest respect to you — is your refusal, despite having the numbers on this committee and also in the Parliament, to clarify the terms of reference so that we can get on with actually giving you information that you want.

**The CHAIR** — Minister — —

**Mr THEOPHANOUS** — Instead you continue to play this game where you do not want to use your numbers to change the terms of reference so that we could give you the answers that you want. Instead you want to play games with the lives of all of these people that have come here to try and hear something which you have the power to clarify right now by simply saying you are going to apply for a change of the terms of reference — —

**The CHAIR** — As you are aware, the committee under standing orders has every power, Minister, to interpret its terms of reference as it sees fit.

**Mr THEOPHANOUS** — Can I tell you on behalf of the government — —

**The CHAIR** — We have sought advice from the clerks.

**Mr THEOPHANOUS** — That is just not true.

**The CHAIR** — Yes, it is.

**Mr TEE** — It is a matter for the Parliament.

**The CHAIR** — It is a matter for the committee to interpret its terms of reference, and it has done so on 8 November and adopted a definition of public land, which I would be very happy to provide you, and I am sure you have in fact seen — —

**Mr TEE** — The committee cannot act outside the powers applied here in turn by Parliament.

**The CHAIR** — It has acted within its powers and seeks information from you.

**Mr THEOPHANOUS** — Can I give you a very simple thing, Mr — —

**The CHAIR** — The reason you want to cover this up is because Rob Hulls signed off on some of these deals and you need to cover it up. He is the one who is leading the cover-up — the Attorney-General of the land. Corruptly covering up, that is what he is doing, and you are involved in this cover-up.

**Mr THEOPHANOUS** — If you want to bag — —

**Mr TEE** — Take it to the Parliament.

**The CHAIR** — You were part of it, too, back then before 2002.

**Mr THEOPHANOUS** — Let me tell you what you are covering up. You are trying to cover up for your leader, Ted Baillieu, who was involved in a whole lot of land transactions himself.

**The CHAIR** — You are trying to cover up for what has gone on.

**Mr THEOPHANOUS** — And you know what would happen if you actually extended the terms of reference? You would have to go and have a look at what Ted Baillieu did — the 80 school that he sold. The millions of dollars that he received from the Kennett government, you would have to go and look at all of that.

**The CHAIR** — I can tell you our terms of reference are quite clear.

**Mr TEE** — The sale of schools. Let us have a look at those.

**The CHAIR** — Mr Tee. I have got to say — —

**Mr TEE** — Baillieu Knight — —

**The CHAIR** — You met with Senator Graham Richardson — —

**Mr THEOPHANOUS** — You would have to go and look at all of that. That is why you do not want to extend the terms of reference.

**The CHAIR** — Let me come to this question, Minister.

**Mr THEOPHANOUS** — Why do you not you come clean?

**The CHAIR** — Let me come to this very simple question.

**Mr THEOPHANOUS** — Why do you not tell people why you do not want to change the terms of reference.

**Mr TEE** — Let us go back to the house.

**The CHAIR** — I would like you to detail today for this committee — —

**Mr THEOPHANOUS** — We can keep going like this for as long as you like. If you want to ask me sensible questions, or if you want to allow other committee members to ask me sensible questions, I am happy to respond to them.

**Mr TEE** — We do not have much time.

**The CHAIR** — Let me ask you a very specific question, and that is about your meeting with Senator Graham Richardson. I would like you to detail precisely what was discussed at that meeting and precisely the impact on the Kew Cottages site and other relevant land transactions.

**Mr THEOPHANOUS** — To inquire into the sale or alienation of public land and for development — —

**The CHAIR** — Minister, I am asking you a very precise question.

**Mr THEOPHANOUS** — The sale or alienation of public open space — I cannot see a thing here about to inquire into Graham Richardson.

**The CHAIR** — Let me explain to you — —

**Mr THEOPHANOUS** — But that has not stopped you before.

**The CHAIR** — But you met with Graham Richardson on Kew Residential Services.

**Mr TEE** — You should get Parliament to clarify this.

**Mr THEOPHANOUS** — Listen! Can I just tell you something?

**The CHAIR** — Tell me what you did with Graham Richardson.

**Mr THEOPHANOUS** — Mr Davis, you are very disrespectful, because you ask a question but you do not allow an answer to the question. You just jump in — —

**The CHAIR** — I will tell you that you are very disrespectful. You will not answer the question.

**Mr THEOPHANOUS** — You either listen to an answer, and then if you want to ask a further question I am happy to answer it. But if you are not going to allow me to answer the question, I will just sit here and let you ask questions without providing answers.

**The CHAIR** — A very simple question: can you detail a conversation that you had with Graham Richardson in relation to Kew Residential Services?

**Mr THEOPHANOUS** — I am trying to answer the question.

**The CHAIR** — I know you do not want to answer that question.

**Mr TEE** — It is not in the terms of reference.

**Mr THEOPHANOUS** — You do not know anything, because you are not allowing me to speak.

**The CHAIR** — You are refusing to answer it.

**Mr THEOPHANOUS** — You are not allowing me to speak.

**The CHAIR** — Please detail the conversation you had.

**Mr THEOPHANOUS** — Again, I will start again. I am reading your terms of reference, and I can see nothing in your terms of reference which refers to Graham Richardson.

**The CHAIR** — It refers to public land and Kew Residential Services to clarify for you — —

**Mr THEOPHANOUS** — There you go again. It is just hopeless. You cannot actually say anything to this committee without you jumping in and not actually allowing the witness to speak.

**The CHAIR** — Come on, Mr Theophanous!

**Mr THEOPHANOUS** — You know what I am going to say. If you think you know what I am going to say, you say it.

**The CHAIR** — Please answer.

**Mr THEOPHANOUS** — Okay, I will start again.

**The CHAIR** — Good.

**Mr THEOPHANOUS** — I can find nothing in your terms of reference which have anything to do with Graham Richardson or any other of the many, many people who come and see me in relation to a range of both public and private projects that we are developing around the state. I am responsible for \$3.5 billion, roughly, worth of major projects in this state, which are being developed as a result of this government's determination to build infrastructure following the previous government's rejection of the construction of infrastructure for this state. In

doing that job I meet with an enormous number of people. I meet with Ron Walker, I meet with Daniel Grollo, I meet with Lindsay Fox, I meet with John McFarlane from the ANZ Bank, I have met with Sol Trujillo. I meet with virtually all of the main business people. I even meet with Andrew Jaspan about the *Age*'s development. I have met with all of those people.

**The CHAIR** — I am not sure I would put Graham Richardson in that category.

**Mr TEE** — Can he answer the question?

**Mr THEOPHANOUS** — I have met with all of those people — and with their representatives, who often want to come and see me in one form or another. As you are aware, I have met with Graham Richardson; I have never made a secret of that, it is a matter of public record. I was asked about it — in fact I was asked about it by a journalist, and I did not make a secret of it. It is nothing that is new. Graham Richardson I met once. I met him, as I do with all other lobbyists, people who represent various organisations or the heads of the organisations themselves, in the context that there is somebody from the department present — —

**The CHAIR** — Who was present?

**Mr THEOPHANOUS** — In order for us to identify what it is that is the subject of discussion, what the person wants to discuss with us. And we have a discussion, we take on board their view but it in no way influences the decisions that this government makes. It certainly does not influence the decisions that I make in relation to projects that come under my control.

**The CHAIR** — So who else was present at the meeting?

**Mr THEOPHANOUS** — Well, I have given you a general answer about how I meet people. I am not going to go into specific discussions about individuals that I meet. I have told you that there were people from the department there — —

**The CHAIR** — Who?

**Mr THEOPHANOUS** — There are people from my office and from the department present at those meetings on an ongoing basis. This committee, in its terms of reference, is not about — —

**Mr TEE** — A witch-hunt.

**Mr THEOPHANOUS** — Lobbyists. It is not about lobbyists. I cannot see anything in the terms of reference which refers to lobbyists. So if you want to talk about things completely extraneous to your terms of reference, then you can ask lots of questions of that sort. I am happy to give you a general answer, which is what I have done, about how I deal with lobbyists, but I am not going to go into specific details about specific meetings because they are not in your terms of reference.

**Mr TEE** — Can someone else ask a question?

**The CHAIR** — Can I just indicate that I think this is a cover-up and I am disappointed that you have not responded. It is your turn, Mr Tee.

**Mr THEOPHANOUS** — If you want to make that kind of provocative statement to me, can I indicate that I think you are covering up for Ted Baillieu because you do not want this committee to change its terms of reference, notwithstanding the fact that you have the power to do it — —

**The CHAIR** — It is very clear; our terms of reference are very clear.

**Mr TEE** — Then change them.

**The CHAIR** — They are clear; there is no need to.

**Mr THEOPHANOUS** — You could change the terms of reference tomorrow, and define properly the difference between public land and government land, which is all that we have ever asked for you to do — —

**The CHAIR** — We have. Would you like the definition?

**Mr THEOPHANOUS** — And if you were to change the terms of reference and instead of saying ‘public land’ — —

**The CHAIR** — There it is.

**Mr TEE** — Why will you not have the debate in the house?

**The CHAIR** — There is no need to.

**Mr THEOPHANOUS** — You have got the numbers, you can go and change it, and then, for all of the people who are here who want to know the answer to questions that you have tried to pump them up about, you could actually ask the questions and I could tell you on behalf of the government that the government would be absolutely 100 per cent prepared to answer any questions — —

**The CHAIR** — It is very clear.

**Mr THEOPHANOUS** — In relation to the terms of reference if you changed them appropriately so that they reflect what you want to actually know.

**The CHAIR** — There is no need to change them.

**Mr TEE** — That is a very generous offer. Minister, my issue is in relation to MPV, and I am asking whether or not it has been involved in the sale or alienation of public land, as defined in the administrative order 58.

**Mr THEOPHANOUS** — Thank you for the question, Mr Tee. I would indicate to the committee that the answer to the question is no. Major Projects Victoria has not been involved in the sale or alienation of public land, as defined by the administrative arrangements order 58. Mr Tee, I might say to you that anyone who wants to think about this logically, and wants to think about it in a common-sense way, would be able to understand the important difference between talking about public land and government land — because public land is land like parks and gardens; it is land which is in public use in that way; that is what public land is. It is a very different proposition to talk about that kind of public land, which is for public purposes of that sort, and to talk about government land, where the government might have land it has got buildings on, or something. That is not the definition of public land.

We have continuously asked the committee to change its terms of reference to make it clear that what it is actually interested in is government land and not public land. In relation to public land the answer to the question is that we have not — MPV has not — been involved in the sale or alienation of public land in Victoria. In fact if there were to be a circumstance where public land was involved, what would happen is that the decision on the sale or alienation of that public land would be made prior to it ever coming anywhere near Major Projects Victoria. Major projects Victoria conducts its activities on the basis of government land that is made available to it. That land may have been in the past public land but MPV has never been involved in the sale, even the transfer, of that public land from being public land to being land under some government department classified as government land. So this is an important distinction that the Attorney-General has made very clear, and we continue to indicate to you: since Major Projects Victoria has not been involved in the sale or alienation of public land under that definition, in effect, me being here means that the answers to questions that I would give in relation to public land would have to be, ‘No, we have not been involved’.

**Mr TEE** — And I take it, of course, that if the committee went to the house, or if the Parliament changed the terms of reference so that they were broader to include some of the sales that MPV has been involved in, some of the land that MPV has been involved in, then you would be happy to answer those questions, as per the amended terms of reference by the Parliament?

**Mr THEOPHANOUS** — I can assure you, Mr Tee, that were the committee to change its terms of reference, the government would be willing to assist the committee in the answer to any questions which were relevant to those terms of reference. At the moment much of the questioning is not.

**Mr TEE** — Thank you, Minister.

**Mr O’DONOHUE** — Minister, it is regrettable that you as a member of the executive refuse to listen to the will of a committee that represents the house and the Parliament — —

**Mr TEE** — He is listening to the will of the house.

**Mr O'DONOHUE** — It is most regrettable. The executive should listen to the will of the Parliament, which this committee represents. Minister, do you accept that at the very least there is a perception of a conflict of interest where the government is the owner of land, the planning authority for that land, and the joint developer for that land?

**Mr THEOPHANOUS** — I do not know in what particular context you are talking, or how it relates to your terms of reference, Mr O'Donohue, because the question is such a broad one. For all I know you could be talking about the time when the government owned 350 schools and got Ted Baillieu's company to sell them. I would say that was inappropriate.

**Mr O'DONOHUE** — Let me assist you minister. I am talking about the Kew Cottages, or the Kew Residential Services site, where your government is joint developer, you are in effect project manager, and your government is also the planning authority. Do you admit that at the very least there is a perception of a conflict of interest?

**Mr THEOPHANOUS** — Again, I would indicate to you that Major Projects Victoria is an organisation which is charged with developing major projects in this state; that is our job. We have a range of those jobs, but they do not relate — and certainly Kew Cottages does not relate — to the sale or alienation of public land. Consequently, I am not prepared to speak to the committee specifically about individual projects relating to terms of reference which do not cover those individual relationships.

**The CHAIR** — The committee believes they do, and I am asking you — —

**Mr TEE** — Take it to the Parliament.

**Mr THEOPHANOUS** — The committee may think that they do. It is open to the committee to take it to — —

**The CHAIR** — The committee resolved to — —

**Mr TEE** — Take it to the Parliament.

**Mr THEOPHANOUS** — Take it to the Parliament and to clarify its terms of reference. But, Mr Davis, in answer to your question I would say to you that there are — —

**The CHAIR** — Mr O'Donohue, actually.

**Mr THEOPHANOUS** — In relation to your interjection, I would say to you that what the Parliament provides is a set of protections. Those protections are for members of Parliament but also for committees and also for witnesses. One of the important parts of our democracy is that a witness who comes before your committee has some rights as well. If there is a single right which a person who comes before your committee has it is the right not to respond to questions which are not within the terms of reference of the committee. It is not an adequate defence for the committee to simply say — because you are a subcommittee of the Parliament in effect — —

**The CHAIR** — Of the chamber.

**Ms PENNICUIK** — That is right.

**Mr THEOPHANOUS** — Of the chamber. It is not up to you to simply say, 'The five of us, or the six of us, think the Parliament had this in mind when it gave us the terms of reference, and so we have interpreted it our way'. The six of you have interpreted it your way. The fact of the matter is that that is not what the Parliament did. The Parliament gave you some written terms of reference — —

**The CHAIR** — Very clear terms of reference.

**Mr THEOPHANOUS** — The interpretation of those terms of reference are the only protection which witnesses have against unfair questioning by a committee like this.

**Mr TEE** — Otherwise the committee could go — —

**Mr THEOPHANOUS** — Otherwise you could ask questions about my private life if you decided that it was part of the terms of reference — —

**The CHAIR** — When you met with Graham Richardson.

**Mr THEOPHANOUS** — Or anyone else's private life, for that matter. You clearly are not entitled to ask those questions, and so — —

**The CHAIR** — Under the terms of reference we are. About Graham Richardson.

**Mr THEOPHANOUS** — Why are you not entitled? You are not entitled because they are not in your terms of reference. That is why you are not entitled.

**The CHAIR** — Yes, we are.

**Mr THEOPHANOUS** — It is not just a matter for you to say, 'I interpret it this way'. If you know there is a genuine dispute here about what the terms of reference mean you can fix that; so can the Greens political party. You have the numbers in the house; it is one simple act. The real question the public should ask themselves is: why do you not want to fix it? What is it that you are trying to protect? Who are you trying to protect, and what are you trying to hide?

**Mr KAVANAGH** — Thank you, Mr Theophanous. I think the answer to your question is that the committee does not feel that anything needs fixing. I would like to ask you a question that I asked Mr Madden a little earlier about large donations to your political party from companies involved in developments. Can I ask why you think they give those donations?

**Mr THEOPHANOUS** — Mr Kavanagh, can I just answer a couple of bits of your question. I respect your opinion, and I respect your intellect as well. I think we have a difference of opinion in relation to the terms of reference. What I do not understand, Mr Kavanagh, is why you would not fix it in the simplest possible way, which is to go back and just change the terms of reference. That is the simplest solution to this, and it is open to you, as it is to the other members. You simply stonewall continuously and say, 'We do not think that is the case'. There is a difference of opinion, and it is within your power to fix that difference of opinion. I do not understand why someone whose intellect I respect would continue to go along with this charade, because it is clearly something that can be fixed, and I am sure that if you and the Greens political party simply said, 'Listen, let's just fix the terms of reference and get on with it', then we would all be doing something very different here.

In relation to your question about political donations, political donations are given to both sides of Parliament, as you are well aware. I am not sure that the DLP gets very much, but both of the main political parties get donations. It is certainly the case that there are major developers in the state who also provide donations. As far as I am aware the major ones, and certainly the ones that have been asked about by this committee, give donations to both sides of Parliament. I do not know — I am not a major developer, to be honest — they have their reasons for giving it and there could be a range of reasons. I do not think it is fair for me to speculate about that. But among the reasons that are given sometimes, not just by developers but by large firms that give a lot of money to the various political parties, some of them say, 'We do it because we actually think that it is part of our democratic responsibility to help maintain a democratic system. If political parties are going to be effective they need to be able to get their message out, and it is all part of a democratic process'.

There are a range of such reasons. I can assure you of one thing, Mr Kavanagh: irrespective of their motives and certainly if their motives are to somehow influence government decisions they would be sadly mistaken because government decisions, and I can certainly assure you, as Minister for Major Projects, that all of the decision making that takes place within Major Projects Victoria, and more broadly in every other one of my responsibilities within government, is done on the basis of the best interests of the people of Victoria.

**Mr KAVANAGH** — We actually heard evidence that they expect enhanced access for this money. Could you tell us how that works?

**Mr THEOPHANOUS** — I do not know who gave you the evidence — —

**The CHAIR** — Mr Hughes.

**Ms PENNICUIK** — Walker Corporation.

**Mr THEOPHANOUS** — People have varying views about that, but I can assure you of one thing in relation to people who come to see me. I never ask, and I do not know, whether the people who come to see me have contributed to the Labor Party or to any other party. What is of interest to me when people come to see me, or want to come to see me, is what it is they want to do for Victoria. That is why I see them. I have a large number of consultative committees. I have a manufacturing industry consultative committee which has many high-powered people on it. I have a finance industry consultative committee. There are many such committees that report directly to me — get access to me. As well as that, let me tell you I want anyone who wants to do a project in Victoria to come and see me and I do not care whether they are a big donor to the Liberal Party or not. I could not care less because if they want to come and they want to do something which is going to create jobs in this state, please come.

**Mr KAVANAGH** — Thank you. You gave a very general description of a meeting with Mr Richardson that you were involved in personally; can you tell us anything about any meetings that your senior staff or advisers had with Mr Richardson?

**Mr THEOPHANOUS** — Again, I am reluctant to enter into discussions about a particular individual. My staff and I meet with a range of people that include some of the people that I mentioned earlier but certainly are not limited to those people. I meet many, many people and I know that this committee is interested in focusing in on Graham Richardson because he happens to be a Labor identity from the past but — —

**The CHAIR** — A crook, too.

**Mr THEOPHANOUS** — He is what?

**The CHAIR** — A crook.

**Mr THEOPHANOUS** — I think that comment — —

**Mr TEE** — Outrageous.

**Mr THEOPHANOUS** — It just shows how I do not think you really deserve to be heading up a committee like this and it just shows your real motives in the way that you are running this. You do it because you know you have parliamentary privilege so you make comments like that which are totally defamatory of somebody. You will not go outside and say them because you know you would not have the guts to do that. So you do it here where you think it is going to carry some weight but you do not want to ask me, for example, about meetings that I might have had with Ron Walker. You do not want to know about those meetings or the sort of issues that he has raised with me. By the way, I have a great deal of respect for Ron Walker as somebody who has contributed to this state. But it is not up to me to come before a committee and talk to you about the nature of the discussions which were confidential between Ron Walker and me, or with a range of other people I have confidential discussions with where sometimes they just float ideas. I am not going to come before a committee and talk about that kind of discussion with someone like Ron Walker or with anyone else, any particular individual. The answer to your question, Mr Kavanagh, is to say I put on the record that I met with Mr Richardson. I had discussions with Mr Richardson. It is matter of public record that I had those discussions. It is also a matter of public record or at least it was reported in the newspapers that he made some request of me. It was also reported in the newspapers that ultimately those requests were denied. Beyond that I am not going to go into any further detail about Graham Richardson as I do not think it is in keeping with your terms of reference.

**Mr KAVANAGH** — You have proudly proclaimed your openness about meetings with Mr Richardson. Can you not tell us about meetings that your staff have had with him not in your presence?

**Mr THEOPHANOUS** — Again, I do not want to mislead the committee. On the other hand, I do not believe that there were significant further or other meetings of my staff with Mr Richardson, but I can assure you that the discussion that took place between him and me was a discussion in which he raised some matters with me. I followed them up. Ultimately I gave him a response which was not to his liking but that is the extent of it, and it is also the extent to which I am prepared to talk about individual projects. I do not think it is fair, nor is it within your terms of reference, to really talk about an individual and their relationship and I am certainly disinclined, given the comment of the Chair, which I hope you do not condone, Mr Kavanagh, made under privilege in the disgraceful way that he did just earlier.

**Mr KAVANAGH** — Could I ask you about the Kew Cottages? In very general terms more than half of the land has not yet been devoted to residential development there; is that right?

**Mr THEOPHANOUS** — Again, I have to say to you, and I know you do not like the answer to this, and I would again encourage you to talk to your colleagues and go back to the house and clarify the terms of reference because I would actually love to give you a lot of information about Kew Cottages because it is a great project. It will deliver great benefits to a large number of people and I would like to be able to talk to you about it.

**Mr KAVANAGH** — I have a very important question and that is, if it is shown even at this late stage that there are far better uses for the remainder of the site that cater to the people with special needs who have traditionally occupied that site over a long period, would you consider developing the rest of the site for that purpose?

**Mr THEOPHANOUS** — Again, I am trying not to be difficult because I want to try to help the committee. The problem is that the question you have asked me is about a specific issue which is outside the terms of reference, and I either make the decision to answer questions outside your terms of reference or I do not. The government has already made it clear to you that we will not be answering questions outside the terms of reference.

**Mr KAVANAGH** — I think you will remember, Mr Theophanous, that in debates establishing the committee Mr Davis in particular did spend a long time checking about the Kew Cottages. It was this particular project largely in mind that the committee was established and that was on the floor of the Parliament, which I am sure you will recall.

**Mr THEOPHANOUS** — As I recall it, there were lots of debates in the Parliament in relation to the establishment of this committee.

**The CHAIR** — One.

**Mr THEOPHANOUS** — Some in support and some in opposition, but it is not about a wish list that an individual might have. It is what the Parliament actually decided and it is the interpretation of the words that Parliament used. If some member of Parliament got up and said, 'I think that we should look at the motor vehicle industry under these terms of reference', that does not mean that they would be entitled to do that simply because they had raised it in the Parliament. I think the issue here — and to be honest with you, I really do not understand why the committee has not taken what is the simplest route to dealing with the issues here —

**Mr TEE** — It is a fair question.

**Mr THEOPHANOUS** — It is obvious to anyone that the simplest way to do this — the first letter from the Attorney-General six months ago stated, 'Please change your terms of reference and we will work with you', and it was a very simple matter to do that. I do not think this has benefited the community. I do not think it has benefited the Parliament and I would love to be able to answer more questions on Kew Cottages because I think it is a fantastic development and I think it is great for the people of Victoria. I would love to be able to tell you all about how it is going to develop in the future and all of the government's future plans for it. But perhaps I could give you an invitation to ask the same question in Parliament and I will answer the question for you in Parliament because in Parliament I have to answer fully any question that you ask me. I have that as an invitation to you but I cannot answer it here because I am constrained by your own terms of reference.

**Ms PENNICUIK** — Minister, during this session today you have been at pains to give your view at some length about the committee's terms of reference — I am presuming for the benefit of the audience. From the committee's point of view, the terms of reference set up were deliberately broad and they use the word 'public' to describe land in the sense that it is understood in the community. With those terms of reference, 136 submissions came to the committee. There was no mention from the Attorney-General or any other person in the government that there was a problem with the terms of reference until several months after they were set up and after all the submissions had come in. I would say two things. One, it is inappropriate for the executive arm of government, including the Attorney-General, to interfere in the committee's interpreting its own terms of reference, and it is in bad faith for the government to do that after 136 community groups and local councils have already put in their submissions in response to those terms of reference. It is completely and well understood among the public what public land means. Some obscure administrative arrangement from 1988 is not well understood in the community. It is disingenuous for the government to rely on that in not answering questions — in refusing to answer questions.

It does not help the government to look as if it is transparent and accountable, which it is forever saying it is, by relying on an obscure administrative arrangement of 1988 to refuse to answer what are reasonable questions put by this committee to the government and department secretaries.

**Mr TEE** — Why can Parliament not sort it out?

**Ms PENNICUIK** — The Parliament does not need to sort it out.

**Mr TEE** — It can, and it will fix it.

**Ms PENNICUIK** — Mr Tee, it is well within the powers of the committee to interpret its terms of reference.

**Mr TEE** — It cannot go off on a frolic of its own.

**Ms PENNICUIK** — It is not appropriate for the government or the Attorney-General to interfere in that process. The terms of reference are very clear: we are talking about publicly own land, as is understood by everybody in this room. With that in mind, Minister, I would like to ask you a question about the development of Kew Residential Services, because that is a development undertaken by Major Projects Victoria, for which you are responsible, on publicly owned land. So I believe that it falls well within the terms of reference of this committee. What I want to ask — and it is of great concern to me — is about the ongoing effects of the closure of Kew Residential Services on the former residents. For example, we heard evidence from Ms Louise Godwin when we set out to Kew and went on a tour of the site and held hearings nearby. She gave evidence that in fact the majority of former residents probably believe that they belonged more to a community when they were at Kew Residential Services than they do now.

At that hearing some other issues were raised by other witnesses, a Mr Waterfall particularly. They raised the amount of accessible space for the 100 residents who have been allowed to stay on site — and only 100 were allowed to stay and that is a contentious issue — that there is a lot less accessible space than there was. They said that the access to services, particularly dental and disability aged care, on the site are inadequate and less than there were before. They raised also the issue of difficult relations between the parents association in particular and Walker Corporation, which we were told at that hearing has simply refused to meet with the Kew Parents Association and therefore has an apparent lack of real commitment to achieving the best results for the residents. I have some questions following from that. What assessments has the government undertaken as to the success or otherwise of the project for the former residents of Kew Residential Services? What flexibility, in terms of adjusting future stages of the development is there to accommodate the needs of former and continuing residents?

**Mr THEOPHANOUS** — Thank you for your extensive preliminary remarks, Ms Pennicuik, and playing very well to the audience. In relation to the comments that you have made, I will try to answer as best I can. First of all, I think that it is clear that we will have to agree to disagree in relation to the terms of reference. Perhaps it is because you are only a relatively new member and perhaps you do not have a clear understanding about — —

**Ms PENNICUIK** — I have a very clear understanding. Do not patronise me, Mr Theophanous.

**Mr THEOPHANOUS** — Maybe you do not have a clear understanding about our democracy and the basis of our democracy.

**Ms PENNICUIK** — Yes, I do.

**Mr THEOPHANOUS** — Because the basis of our democracy is not just about a group of people setting themselves up and because they are a committee appointed by the Parliament being able to set themselves up, as whatever questions they want of anyone they want, call people crooks and do all of those kinds of things — —

**Ms PENNICUIK** — Mr Theophanous, I am asking you a question about a parcel of public land — —

**Mr THEOPHANOUS** — I am trying to answer your question.

**Ms PENNICUIK** — — for which you have responsibility and on which we have received many submissions and on which we have had hearings.

**Mr TEE** — It was a long question. I would not mind listening to the answer.

**Mr THEOPHANOUS** — It was a very long question, with a long preliminary set of remarks and I take the opportunity to respond to your remarks. I again point out to you that our democracy is based on legal protections that people have. Part of those legal protections is that you operate within things like terms of reference. There is a legal protection available to a witness, which is the interpretation of the terms of reference; you can have your own interpretation of the terms of reference. But I would put it to you, Ms Pennicuik, that where there is a dispute about the interpretation of the terms of reference there are two things that follow. One is that the witness can say that they do not agree with your interpretation. The second thing that follows is that it is open to you to clarify the terms of reference and put them beyond doubt by going to the Parliament. Those two things you have chosen not to do, for your own political reasons.

**Ms PENNICUIK** — No, very good reasons, which I have already outlined.

**Mr THEOPHANOUS** — I will come to those, because one of the things you said was that people made submissions. I suggest to you that had you had clearer terms of reference you may have actually got more submissions. In fact, you would have got a lot more submissions had you used the term ‘government land’, or even ‘publicly owned land’, which you did not even use. I think that any reasonable person can have a view of public land as being — and it has been a longstanding one; it is back in the statutes and in the administrative order — that public land is different from government land. So again I say to you: clarify the terms of reference and let’s get on with it. In relation to your specific accusations about Kew Cottages — —

**The CHAIR** — Evidence before the committee.

**Ms PENNICUIK** — I did not make an accusation; I repeated evidence that the committee has heard.

**Mr THEOPHANOUS** — I do not know which — I think you would need to identify for me — —

**The CHAIR** — She named — —

**Mr THEOPHANOUS** — — where in the evidence that has appeared.

**Ms PENNICUIK** — I am sure you have read it, Mr Theophanous.

**Mr THEOPHANOUS** — Again within the constraint that I have identified of not being prepared to answer questions outside your terms of reference, I would simply say this to you: so far as that particular development or any other of the many developments that we are doing in Major Projects Victoria — whether it be the building of the new rectangular stadium or the recital hall, which is an exciting development that we are doing, or the Austin Hospital, which we are in the process of completing, or the synchrotron that we are building — all these major projects are adding to our way of life in this state. Kew Cottages, as well as a range of other such developments, will also add. Let me tell you that the government believes that these major projects, including that one, will add to the way of life of a whole range of people who will benefit from those major projects.

**Ms PENNICUIK** — Minister, I am particularly interested in the way of life of the continuing and former residents of Kew Residential Services. After all, the government’s rationale for the sale or alienation of this significant public land was that it was for the benefit of the residents. Certainly we have heard evidence from the parents association, the Kew residents association, that this is not necessarily the case.

**Mr TEE** — That is not my recollection of the evidence.

**The CHAIR** — It is certainly mine.

**Ms PENNICUIK** — Is the government going to go full steam ahead with stages 2 and 3 without assessing how this has impacted on the residents, the continuing and former residents, and having some capability of adjusting those stages, to put back in the facilities that are needed by those former residents, continuing residents and, as I understand, a waiting list of some 1500 other people who could be included?

**Mr THEOPHANOUS** — Again, the questions are completely outside of your terms of reference, and I certainly have not read anything in witness statements that concurs with your interpretation of events in relation to that particular development. I would simply say that we are very proud of that development; it is delivering a

significant benefit to the people of Victoria, but again, a detailed discussion about it would be outside of your terms of reference. However, if you want to ask me the question in Parliament, where you are entitled to ask such a question, I would be very happy. You have had now nine months where you could have asked me this question in Parliament.

**Ms PENNICUIK** — I only get one question every second week, Mr Theophanous.

**Mr THEOPHANOUS** — And I have not received a single question — not a single question! — from the Greens political party on Kew Cottages. I do not think I have even received one from the Liberal Party. You know that I cannot refer back to terms of reference in the Parliament, so if you want the question answered, ask it there or come to Parliament, change the terms of reference, come back and I will give you an absolutely detailed chapter-and-verse understanding of the great work that we have done down at the Kew Cottages development.

**Ms PENNICUIK** — Minister, I believe I am entitled to ask the question here now. I will ask another question: in what way does the development of the former Kew Residential Services constitute a major project in that ‘major project’ is defined as something that achieves exceptional economic, social and environmental outcomes for the Victorian community; we are not sure about the social outcomes in terms of the former residents because no assessment has been done and we know that there have been heritage and environmental issues that have not been assessed properly on the site?

**Mr THEOPHANOUS** — I do not know where you get your definition of ‘major projects’.

**Ms PENNICUIK** — I get it from the Major Projects Victoria website.

**Mr THEOPHANOUS** — Right. Let me tell you that if you are saying that the Kew development or any of the other developments that we do, not all of our developments are hundreds of millions of dollars, some of them are smaller, in fact — —

**The CHAIR** — Parliamentary kitchens.

**Mr THEOPHANOUS** — We have very small projects that we do, in relative terms, but they are extremely valuable from the point of view of the community. The Hepburn Springs development, for instance, which is a \$10.8 million project, is relatively small. You might argue the toss about whether it is a major project or not, but we see it as an important project which required a specialist type of management and Major Projects Victoria was the only body, really, within government that had that specialist type of management capability to manage such a project. Let me tell you, when it is completed it will be a phenomenal project from the point of view of that community.

**Ms PENNICUIK** — What specialist type of management did it require?

**Mr THEOPHANOUS** — The project at Hepburn Springs is one which — —

**Ms PENNICUIK** — No, Kew, I am talking about.

**Mr THEOPHANOUS** — Sorry. I was talking about Hepburn Springs. Both these projects require different types of management. I was referring to the Hepburn Springs development, which of course requires some specialist construction issues that we face there because of the way the springs operate and how we were going to build within that context. It will be completed soon, and the people in that district will enjoy a facility which will last 50 years and will provide an enormous amount of enjoyment for a lot of people. I would suggest to you, Ms Pennicuik, you should take advantage of it; go down there for a spa; I am sure you will enjoy it very much.

**The CHAIR** — I do not think the question was about Hepburn.

**Mr THEOPHANOUS** — You will be one of thousands that will go down there and add tourism to that area. Kew cottages is the same, only in the sense that it is another one of our major projects that comes within the Major Projects Victoria portfolio.

**Ms PENNICUIK** — Minister, it did not always come within Major Projects. It was overseen by the Boroondara council and it was called in by the minister. One of the things that happened then was that the Boroondara council had a requirement that 50 per cent of the site be retained as public open space, because the site

was originally part of a green wedge — zoned green wedge — and then when it emerged as a major project the public open space requirement was 27 per cent as well as a few other disappearing conditions that were on the site. Can you tell us why that happened?

**Mr THEOPHANOUS** — Again I refer you to the fact that your continuing questions in relation to the specifics of this particular project and the history of the development of this project are outside of your terms of reference.

**Ms PENNICUIK** — I do not believe they are.

**Mr THEOPHANOUS** — I have advice, including from the Attorney-General of this state, that they are outside the terms.

**Ms PENNICUIK** — But the Attorney-General should not be interfering in the workings of this committee.

**Mr THEOPHANOUS** — The interpretation of terms of reference is a legal question. You have your own views about it, but we believe that we are on very solid legal grounds that your terms of reference do not allow you to ask specific questions about land which is not classified as public land. The Kew development falls within that category. I have said to you before how pleased I would be to be able to explain to you how the government came in, took over this project when it was in danger of going nowhere, developed it into a very successful project which will deliver a huge and ongoing benefit to an enormous number of people in Victoria. I would love to be able to describe all of those things for you in detail, but that would be outside your terms of reference.

**Ms PENNICUIK** — Perhaps you could describe who the enormous number of people are that it is going to benefit?

**Mr THEOPHANOUS** — Again, I would be very happy to do so. All I ask of you is that you do the right thing by the people who actually want the answers here, and go back to the Parliament, change your terms of reference and then have another hearing. I will give you my undertaking that I will come here and I will answer whatever question you want.

**Ms PENNICUIK** — Yes, Minister, I am doing the right thing. Thank you.

**The CHAIR** — I have one final question. I might pass this material over to you. Because your time will have elapsed, I will be quite brief on this. This is the plan of stage 2 as submitted to your colleague, the Minister for Planning, and it lays out stage 2 in its application.

**Mr TEE** — Why did you not give it to him until today when he had the chance to answer it?

**The CHAIR** — We ran out of time. If I had had the opportunity, I would have done so. I have laid out that we may need to talk to the Minister for Planning again. This is the plan that is laid out in that application. It is my understanding that the minister has ticked off on this plan and that a planning approval has been given for stage 2. There is, however, an unusual sequence that has occurred here. Heritage Victoria has expressed a number of concerns about the impact of the stage 2 proposal. Heritage Victoria has as yet not agreed to the approval that has been given by the minister. You will see here, in the middle, there is a series of trees. If you look in the key up on the right side of the chart, a circle with a small cross which says next to it, 'Tree proposed to be removed'. In stage 1 there were already 171 trees at Kew Residential Services that were swept away. This proposes, in stage 2, to sweep away another 73 trees, including many large trees — canopy trees, a number of unique trees — that have drawn the interest of Heritage Victoria. I am seeking from you today, as the proponent through Major Projects Victoria, a commitment that you will not proceed with this until Heritage Victoria has given its full clearance that there will be no loss that would disturb Heritage Victoria.

**Mr THEOPHANOUS** — Thank you for another question outside of your terms of reference, Mr Davis. I would respond by saying I have a great deal of respect for Heritage Victoria. I also believe that the processes that the government has in place for determining planning issues, including planning issues related to the example that you have put before me today, are ones that we are prepared to stand by in terms of those planning processes. It is always a balance between the variety of views and interests. I am not the planning minister, as you are fully aware.

**The CHAIR** — I accept that you are the proponent through Major Projects Victoria.

**Mr THEOPHANOUS** — I am the minister responsible for actually delivering the projects. Kew Cottages is just one of a number of projects — —

**The CHAIR** — A major one.

**Mr THEOPHANOUS** — that I have to deliver; it is a significant project, amongst all of the various other projects. Again, interestingly, this particular project is not a project which is on public land. If you were to ask me, if you had actually done any of your research, you might have actually been able to discover that there are a number of projects which have been developed by Major Projects Victoria which actually are on public land.

**The CHAIR** — This is on public land. This is 27 hectares of prime land.

**Mr TEE** — He is answering the question. You have asked the question.

**Mr THEOPHANOUS** — Public land in terms of being a park of some sort or public land in terms of parks and gardens that have been the case in the past. You could have, for instance, asked me about the Melbourne Museum, which was constructed on a park. I think it was done by the Kennett government back then — at least it was commenced by the Kennett government. That would be an example where a development took place on public land.

**The CHAIR** — Minister, my question was actually quite specific about — —

**Mr THEOPHANOUS** — It is not the only one. Hepburn Springs, which I mentioned earlier, is also on public land.

**The CHAIR** — I accept that.

**Mr THEOPHANOUS** — It is a development on public land. You could actually have actually asked me about — —

**The CHAIR** — I am highly interested in that, and we would if we had more time.

**Mr THEOPHANOUS** — You could have asked me about things that fall within your terms of reference. If you had asked me about those developments on public land, I would have also had to tell you that we did not sell the sites. They were not sold or alienated in any way.

**The CHAIR** — Long-term leases are alienation.

**Mr THEOPHANOUS** — Your terms of reference talk about sale or alienation. That is what you want to know about. We do develop things on public land.

**The CHAIR** — Minister, if I can just bring you back to this set of questions that I have on this specific document: I am very conscious that Mr Tee has got to leave so I will make this a single, final attempt to ask about the 73 trees that face extinguishment through the activities of Major Projects Victoria and Walker Corporation. Will you guarantee that that will not occur until Heritage Victoria has given its formal response?

**Mr THEOPHANOUS** — I can guarantee you, Mr Davis, that we will only operate on the basis of appropriate processes and appropriate consultation. I can also guarantee you that from my point of view we certainly respect the views of organisations like Heritage Victoria. But I am not going to enter into a discussion with you about issues which are outside of your terms of reference. I again invite you to come to the Parliament and change your terms of reference so that we can have a long and detailed discussion about not only this particular project but any other project that would then fall within your terms of reference.

**The CHAIR** — I am conscious of the time and I am conscious that we are running a little late, and I apologise to you for that, but I indicate that there may well be further questions, as I indicated to the Minister for Planning earlier. It may well be the case that the committee seeks further detailed discussion with you on a number of parts of its submissions. I thank you for your appearance today.

**Mr THEOPHANOUS** — Thank you.

**Committee adjourned.**