

CORRECTED VERSION

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

St Kilda — 5 March 2008

Members

Mr D. Davis

Mr P. Hall

Mr P. Kavanagh

Mr E. O'Donohue

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Mr B. Tee

Mr E. Thornley

Chair: Mr D. Davis

Deputy Chair: Mr B. Tee

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Secretary: Mr R. Willis

Research Officer: Ms C. Williams

Witnesses

Mr P. Holland,

Mr J. Bennetts, and

Mr D. Gazzard, Unchain St Kilda.

The CHAIR — I welcome Unchain St Kilda. I ask you to give us a brief submission. We have a large amount of written material which is very helpful.

Mr HOLLAND — John will address you briefly on one issue.

Mr BENNETTS — Peter is going to be making a submission, but I just thought I would address Mr Tee who asked a question before, and Mr Thornley, about what the process is and what large issues there are at stake here.

Mr TEE — What are the lessons?

Mr BENNETTS — What are the lessons? I think there are two planning lessons and one commercial lesson that are very, very important. From a planning perspective two things are lacking here that are causing problems. One is independence, and the lack of independence is a massive issue. It means that a group of people without consultation can move a whole process and approve a development, frankly in any manner they like. The lack of independence has been a major problem here.

The second thing is the complexity of these issues and the lack of an independent expert or series of experts who are able to judge these issues. These sorts of planning issues are very complex from urban design, economic and planning perspectives. What we have here is a process where a planning decision-maker can make a decision without review and without even a requirement to have a full recourse to a full range of experts let alone independent experts.

I think the final lesson from a development perspective is that a colossal mistake was made: the colossal mistake was that before the development plan was submitted to the public in any shape or form a commercial deal of some sort was done with the developer that is yet to be disclosed to the public but which has manifested itself throughout this process as being one that has put impediments on the council's ability to deal with the site. This land has gone from being a bit of public land to an alienated piece of land with the council losing control of it before it put the development plan out to the public, and that has caused a lot of trouble.

Mr TEE — On the issue of independence, I suppose that for every person who has a view that you need independence there is another person who says that you need a representative model; you need community views that are reflected through their elected representatives. I suppose it is how you make the judgement about what model you want. People criticise VCAT and say, 'There is an unelected, unrepresentative body making a decision that will impact on the whole community without the community being represented in any particular way'. I suppose it is how you manage those conflicting tensions in terms of expectations and process?

Mr BENNETTS — Yes. I would venture that the existing system does a markedly better job than what has happened in this case because at least the existing system has council as the first decision-maker comprising the elected representatives of the people, and then with the ability for there to be an independent and expert overview after that. In this case we do not have that.

Mr HOLLAND — I will quickly walk through our submission; I will definitely not try to read it all. We have 30 headings so I might talk about it heading by heading, quickly walking through. We start off with the introduction about our background including a short summary of the major problems.

Heading 2 deals with the process and public opinion, and there is a little bit of background there about the UDF and the development plan overlay. There is a little bit of information about the St Kilda's Edge Committee, and finally under that heading 2 there is a short summary about some of the widespread community opposition and the fact that 6000 submissions were sent to council and a separate petition of 6000 et cetera.

Then we start to analyse the problem. The first problem shown is under heading 3, that the development plan does not comply with the UDF — this is on page 3. The second paragraph indicates that entertainment and culture are the core of the vision of the UDF, and I suppose that is our fundamental problem. We feel that that vision has been betrayed. There are quotes from the UDF stating that a substantial retail component as proposed by the successful consortium was never envisaged for this site in the UDF.

Unchain St Kilda commissioned a report from Professor Roz Hansen, who I am sure you know. She is the leading consultant in the field. We have attached her analysis as a separate submission. She concludes that the development plan proposed does not comply with the UDF. There are various aspects there, but I will not go into them.

The fourth heading flows on from that, and it is that this development plan not only fails to comply with the UDF but also fails to comply with the zoning of the area which is special use zone 3, which lays down various purposes. One of them is to implement the incorporated documents St Kilda Urban Design Framework, 2002. We would argue that the urban design framework is more than a general aspirational document; it has significant planning force. It goes on to say that the urban design framework:

envisages the integrated renewal of the triangle site to provide a variety of public spaces and entertainment and cultural venues.

There is nothing there about a massive retail centre. The Hansen report concludes that the development plan does not comply with the special use zone, partly in that it does not comply with the UDF. There are also some specific aspects in which it fails to comply, such as the lack of detail that would be required under the special use zone.

Heading 5 indicates that the development plan does not comply with the development plan overlay. This again is a document that flows from the UDF. The purpose of the development plan overlay is to provide a framework to achieve the purpose set out in the special use zone 3 of the UDF. Professor Hansen analysed the development plan overlay, and first of all found that the proponent has not provided all the necessary information; secondly, that since the UDF is an incorporated document the development plan proposed did not comply with the UDF and therefore with the development plan overlay.

The Hansen report is on an earlier stage of this process, there have been subsequent changes. They are significant changes, but some of those significant changes also manifest non-compliance with the urban design overlay, and the most obvious one of these is the change in the shadow diagram. Essentially what has happened is that the development plan overlay requires a shadow envelope. It is at 10 o'clock, but that has been changed to 11 o'clock, which essentially permits a higher building at the back of the Palais by one or two storeys.

In heading 6 we start to analyse what the problem was; it has the heading 'The St Kilda's Edge Committee'. Here we analyse the fact that the council is wearing two hats. On the one hand it is the co-proponent of the trial development and on the other hand it is the responsible authority. In its planning role the council delegated a lot of responsibility to a statutory planning committee but the problem here is that if something goes wrong with the council in its first hat as the proponent, is there something like some checks and balances, some Chinese walls or something to get the proposal back on track, back to the vision that was promised in the UDF?

One key problem here is the role of the chief executive officer. We believe that originally the concept was that the St Kilda's Edge Committee would be comprised of some independent people, some councillors, and its activities — that is, the council in its role as the proponent — could be scrutinised by the council in its other hat with the chief executive officer and various officers analysing what came out of that St Kilda's Edge Committee process. These informal checks and balances seem to have collapsed initially when the chief executive officer decided, I think, to appoint himself to the St Kilda's Edge Committee, so immediately the one check and balance had collapsed.

It is not surprising that if, coming from the St Kilda's Edge Committee, there is a proposal, the junior officers within the council would be reluctant to criticise their boss' work. The unsuccessful tenderers of course might have some criticism about the way the St Kilda's Edge Committee worked, but they have various confidentiality obligations in the agreements that they have signed and so they are not able publicly to discuss what happened at the St Kilda's Edge Committee. That is something that we suggest that your committee might investigate further by inviting them to also submit at the same time perhaps as the Citta development is submitting at some later date.

There were also councillors on the St Kilda's Edge Committee — the mayor and the ward councillor — and they were more or less committed to the proposal that they had pushed through the St Kilda's Edge Committee. When it came to the council in its planning hat, it was limited. You had some councillors already committed — the chief executive officer, junior officers; all you had was a handful of independent councillors who had very little knowledge of the details. The only place that they could get knowledge really was through a series of independent expert reports.

The chief executive officer refused to commission any of these independent reports. It was inherently a disaster waiting to happen. If something went off the rails, then there was no mechanism to get it back onto the rails. In the result here under heading 7, the St Kilda's Edge Committee did go off the rails. It encouraged tenderers to exceed the urban design framework.

The councillors claimed that the UDF was the guiding criteria in assessing the proposal but in fact the comments of the chief executive officer clearly showed that the St Kilda's Edge Committee went outside the UDF. The earlier statements from the St Kilda's Edge Committee promised a cultural and entertainment centre and in a paragraph under heading 7 we quote in italics the earlier statements from the St Kilda Edge Committee which talks about a reinvigorated public entertainment cultural space that would be supported by some related retail users, but these would not be significant, there would not be another shopping plaza, definitely no wall-to-wall retail. That was the sort of promise people had, not just in the UDF but as the process was developing.

What in actual fact happened was that that was abandoned. We get this huge retail complex, and we are not sure how and why this happened. One possibility is that it happened as a result of the Spiller Gibbons Swan (SGS) report in 2004. We have not been given access to this report. We have requested it informally and through the formal FOI process, but it has not been forwarded.

Nonetheless, from the quotes from that report that were in David Spokes's original report to council in December we can glean something of what that report had to say. It promised various benefits: I think there were \$112 million worth of benefits promised to the City of Melbourne in that report. It may well be that that report was the stimulus for a new concept about what could happen with this triangle. In his December report David Spokes indicated, or specifically stated, that they selected a bid that best met the UDF and 'other objectives'. The other objectives appear to be those that maximise the financial and commercial benefits to the community.

There were 15 expressions of interest that were short-listed down to 3 and then to 2. We know that some of those tenderers, from informal conversations, submitted tenders that were well within the UDF, quite modest proposals, some of them for say \$70 million or \$80 million, essentially proposing a cultural and entertainment centre like the one we were promised in the UDF, but for some reason the tenderers were encouraged to build something that was bigger and grander, possibly with this new vision that came from the SGS report in 2004.

I say here that it is not clear why the St Kilda's Edge Committee took upon itself to jettison the UDF. One possibility is it was persuaded by the SGS report. Another is that if the council maximises the financial returns, the rates and rents that it receives from the site, then it can go on to do the good things that council intends to do, such as spending \$10 million on the South Melbourne market or building a new nursing home at Port Melbourne et cetera; that is possibly another reason. But there are two obvious things that push for a big commercial development here, one being the refusal of the state government to contribute any money, and we might come back to that later.

I say here that this would represent a modest investment in making Melbourne more livable. I take your point about conflicting demands on the public purse. I have got a child at the local high school, and I know how tough it is to get money into the high school, so I take that point. But at the same time, I know that Melbourne has various competitors. The concept of Melbourne being a livable city is part of its overall attractiveness. It is part of St Kilda's heritage to be not just a residential area but a tourist and an entertainment area, that goes back to the 1850s. That is an important point today for Melbourne's competitive advantage.

For instance, we are competing with other university cities. We are competing with Boston. To keep our good researchers here or to attract someone from England in competition with Boston, we need Melbourne to be creative, lively and artistic. It seems to me that part of that would be having the St Kilda triangle developed as an exciting, creative, entertainment and cultural area. It does not matter whether we have got a researcher who lives out at Clayton near Monash University or the University of Melbourne up in Parkville, they will partly be more attracted to St Kilda, or to Melbourne, if it has got that sort of aura. So the refusal of the state government to contribute any money meant that there was a pressure to over commercialised the rest of the development.

A second factor pushing for an overdevelopment of this is mismanagement of the tender process by the council. The tenderers were being asked basically to buy a pig in a poke, because they could not get into the Palais or the Palace because the lessees refused to give them access. Naturally if you are a potential tenderer and you are buying

this blind thing, you know you have to refurbish it, you are going to build-in a margin for error and you are going to overcompensate.

This was something that the council should have envisaged. It happened at a previous foreshore development at the Stokehouse, and I understand that council actually had legal advice telling it that it may not be able to give the potential tenderers access to the Palais and the Palace in order to get a more fully-informed bid. That is the second clear reason why this process drove an overdevelopment of the site.

The St Kilda's Edge Committee is a black box. What went in was we had this vision of an entertainment cultural centre. What came out was a shopping mall and a destination drinking venue. I think we do not know what happened. The select committee could investigate further or, as I suggest later, perhaps this is something that will be more appropriate to ask the Ombudsman to investigate just how did it go off the rails.

Heading 8 is 'That the council has wilfully blinded itself to an analysis that the development plan does not conform to the UDF ...'. The council had information from the one independent expert that it commissioned. It commissioned a Matrix report with a limited terms of reference. The Matrix report was just asked to summarise the various submissions from the community and to tell the councillors how much weight should be put upon them. Mr Clarke of Matrix Planning was not asked to actually look at the details, just to summarise what was in the submissions from the community and to say whether these had any weight.

On the non-compliance with the UDF, the Matrix report said that significant weight should be attached to the various submissions. One would have thought that the council then would have said, 'Well, we will investigate this. If our independent expert says there is significant weight to the concerns about the retail, concerns about the views, we will investigate it further'. But the council basically did nothing. It did not commission any independent reports, and that is why we, Unchain St Kilda, had to raise the money and pay Professor Hansen to write the independent report that basically we think that the council should have commissioned.

I am sure that if the council had commissioned that report the councillors would have paid more attention to it. My perception is that little weight was paid to the report, even though it came from a leading consultant. Had the council commissioned that report and a series of other reports, it would have been much more influential than its being commissioned by an outside group.

Heading 9 is 'That the retail component is not justified by any other government or council policy'. The retail component of this site is outside the UDF. It is also outside a variety of others. Professor Hansen considers these, such as the council's municipal strategic statement, the retail centres policy for Port Phillip, the St Kilda foreshore area policy. Her conclusion is damning. She said:

In our opinion there has been a 'manipulation' of policy intent by some parties, including the developer for the triangle site, to justify the substantial retail floor space component and yet there is very little, if any, policy support, especially at the local level, to justify —

this —

... we are of the opinion that there is no substantive support in the existing ... policy framework for an activity centre for retail uses of this scale and nature on the St Kilda triangle site.

Heading 10 is 'That the council is retrospectively amending the planning rules'. Throw in a bit of Alice in Wonderland, where the Queen said, 'Sentence first — verdict afterwards!', and that is what is happening here. We have our approved development plan first and now the council is saying, 'We better amend all our planning rules, starting off with trying to have St Kilda declared a principal activity centre under Melbourne 2030 and then we are off to the races with all our local planning policies'.

Heading 11 is 'That the council has wilfully blinded itself to other defects with the development plan'. There is a range of other expert reports that we think that the council should have commissioned. I asked a consultant who was working with the Whitehorse council for Box Hill about the sorts of reports that that council was requiring. On the basis of that, there is a variety of other expert reports that were commissioned.

I will just quickly go through them. One was an independent economic analysis by Tim Nott, who came to quite a different opinion from the SGS about the impact on Fitzroy and Acland streets. A comprehensive social analysis, a heritage analysis. We commissioned Australia's leading heritage consultant, Clive Lucas, and we have attached his report.

Heading 15 is 'An independent examination of the environmental and sustainability aspects ...'. Heading 16 is 'An independent urban design report'. There was a reference to the design review committee. I know that David Brand was on that committee, and he is speaking later so he will be able to address you on that.

Heading 17 is 'An independent traffic and parking study'. We commissioned a separate report on that. Heading 18 — the nightclubs issue — is 'Council has failed to consult with the police and the liquor licensing authorities' — and the community — 'on whether it is appropriate to establish a nightclub precinct ...'

This is a major concern for many people in the community. We have got four nightclubs with a capacity of 3000, a tavern of 900 and various other venues. The churn might mean that we get 12 000 extra people on the streets at 2.00 a.m. added to the existing problem that we have in Fitzroy Street.

In our submission we go through some of the expert analysis, starting with Professor Hansen. Professor Hansen looks at the urban design framework and asks, 'What was promised?'. There is clearly some drinking, some entertainment venues as appropriate. But she said:

... it is evident to us that the intent of the planning scheme as it relates to the triangle site is not to over provide for licensed premises. The site should be a family friendly place with a mix of uses which are complementary to the site's foreshore, beach locale and enjoyment of culture and entertainment ...

There is substantial expert evidence that the creation of a new nightclub precinct with the four nightclubs and a tavern is going to produce major social problems. There was superficial consideration of this in the SGS report to council. But most of the research that is easily accessible comes from a 2006 parliamentary inquiry. I list there in exhaustive detail the submissions by the alcohol and drugs council, the Australian Drug Foundation and VicHealth. Essentially the concept there is that if you get a cluster of nightclubs you get problems. You can get perhaps exactly the same number of patrons in a different style of establishment and you do not have the same problems. The concept is that of Brunswick Street, with smaller venues, perhaps a bit more live music, a range of venues. It creates a lot less problems than the same number of patrons in two or three or four nightclubs. There is a variety of expert evidence to that effect that we list there, including Professor John Nieuwenhuysen, who is the author of our current licensing laws.

On page 19 we show that St Kilda has a history of problematic late-night venues. I was on council in the late 1980s and early 1990s and then we had a problem with probably 9 or 10 venues that were basically bloodhouses. Places like the George Hotel were just horrendous. We have heard about Bojangles nightclub at what is now the sea baths. The same thing may well be being repeated.

I know the local member of the House of Representatives, Michael Danby, has voiced concern about the nightclubs. His concern was triggered when he learnt that one of the frontrunners for the nightclubs at this site was an operator of a nightclub called Heat that did not have its lease renewed at Crown Casino. It had too many problems with gangsters and drug selling for even Mr Packer to handle. Mr Danby was outraged when he learnt that the operators of Heat nightclub, which had been thrown out of the Crown Casino, were on the public record as being frontrunners for nightclubs in this area. I conclude by saying that the UDF and sound public policy would support something that I call a 'Brunswick Street by the sea' area, but not a King Street or a Queen Street by the sea area.

Heading 19 is that the public benefits that have been claimed are significantly less than in reality. There are claimed public benefits above \$65 million. We get very little information about the detailed break-up of this, so we are not really able to analyse it. On a fairly superficial analysis, we say that the public benefits are significantly less. At the very least, the council should have commissioned its expert independent analysis. Is the community really getting \$65 million worth of public benefit. They have just accepted the developer's word for it.

Heading 20 is 'That the council officers and councillors have prejudged the issue'. We lectured the councillors on their responsibility under Winky Pop, a recent Supreme Court case, and they immediately started consulting very nicely. Previously they had been telling us, 'Peter, it is a done deal', so we think it was very difficult to change the minds of some of the councillors. They were prepared to change at the margins, but the essentials of a big retail centre that supported the restoration of the Palais and the large nightclub precinct they were not prepared to budge from.

Heading 21 is 'The conduct of council'. I was not quite sure whether to include this, but I thought I had better include it. I know that a number of traders have, after they have publicly spoken out, been visited by council

officers for the first time ever in many cases. They have been fined and warned about various infractions of various rules. This could well be coincidental, but it seemed to me to be too close to a pattern of conduct to be comfortable. The council's conduct in refusing to release information, requiring short time periods for submissions and in some cases perhaps threatening potential opponents is something that is worthwhile investigating. The contract between the council and the developer that John Bennetts has alluded to we do not know, even the non-confidential elements. Sure, there are commercial-in-confidence matters that should not be released, but it seems to me that there are a variety of things in that development agreement — I think it is between the state government, the council and the developer — that it is appropriate to release.

Heading 23 is 'That the BBC proposal for the triangle site is unlawful'. There are three or four grounds on which that can be argued. I have given a brief summary of the three grounds there.

Heading 24 is 'The role of the state government'. The state government has been asked to put money in. There was a newspaper report that the state government was considering a \$15 million subsidy for the cost of decontamination. On the one hand I think it is terrific that the state government would consider — if that is true; I know it has been denied. I think it is quite appropriate for the state government to contribute money to this public land, but clearly it should be done early in the piece where all the potential tenderers know they can include that in their figurings.

Heading 25 is 'What is to be done?'. There is a concern that this committee might be seen to be powerless and partisan. I suppose it is in the nature of politics to be somewhat partisan. But that means that perhaps there is not as full a consideration of this as would be appropriate. One possibility is a reference to the priority development panel. I know that is often seem to be pro-development, but it would perhaps take some of the heat out because we could then perhaps have an independent analysis, the range of expert reports could be called for — —

The CHAIR — And public.

Mr HOLLAND — And public. But that is going to be a decision for the government — I think it is the Minister for Planning, and I suppose that is the members from the government side. If they think it is appropriate perhaps the panel, especially the members from the Labor Party, could ask the Minister for Planning to consider referring this to the priority development panel so that we can then take some of the heat out of this and have an independent analysis of the merits of the particular proposal.

A second possibility is an informal reference to the liquor licensing authorities. I think this is probably a separate matter that the priority development panel would not consider, but perhaps it is possible to have an informal inquiry by Liquor Licensing Victoria, the police, the community and others into the question of whether we want to establish a nightclub precinct here before we get into the more detailed thing of once we have got a precinct, how are we going to deal with the problems?

A third possibility is reference to the Ombudsman. This committee has the power under the Ombudsman Act to refer matters to it. The reason for doing that is that in our opinion there has been a mismanagement of public land. We should get it right. We should learn whatever lessons there are to be learnt, and perhaps the reference to the Ombudsman would enable an expert analysis and also a non-partisan analysis of what has happened. That is a third suggestion that we have: that this committee should use its powers under the Ombudsman Act to ask the Ombudsman to investigate.

Heading 29 is 'Changes to the planning process ...'. Clearly you have got the expertise; you have an overview of a variety of sites, but there are eight things that I think you should consider. One is state funding. The problem here is that rather than perhaps an isolated higgledy-piggledy approach of people asking for money for various public lands, there could be some more rigorous and systematic process established at the state government level to decide what sort of public land developments should be funded from the public purse.

The second is the tender concept. A tender concept might sound good, but what the tender concept did for this site was to exclude a variety of smaller potential developers. There is an alternative, and that is to have some sort of architectural competition. If you have an architectural competition judged by architects and urban designers et cetera, perhaps that enables a wider range of concepts to be thrown up. I understand that it possibly costs the tenderers maybe \$1 million to develop a fully-fledged tender here, so clearly that is going to dissuade a lot of smaller developers from putting up ideas.

Thirdly, there is the probity process. There was a probity process here, but could that be expanded? Could the probity overseer also be asked not just to consider the traditional range of matters but also things like whether the UDF was being complied with.

Fourthly, there is the urban design framework process. We are told by council officers that this is merely an aspirational document. I thought aspirational meant something you aimed for. The council seems to think aspirational means that it is optional — ‘If we don’t like it we can walk away from it’. Perhaps you should consider: what is the UDF? To what extent is it aspirational? To what extent does it give some sort of more binding guidelines. Also, could there be a two-stage UDF? We have this UDF process that in 2001 starts off, and there is a fair bit of public consultation when the UDF is developed, and we are given this promise of an entertainment and cultural vision — we are happy with that. Yet maybe five years later what comes out of the process we are not happy with. Could there be a second stage there at some stage where potential tenderers, the council, says, ‘We’ve got our UDF, perhaps we can make some changes, bring in lot of retail’. Or, ‘I’ve got this fantastic proposal for a really exciting thing but it is not financial if I also have to restore the Palais’, and at that stage ask the state government, ‘Can you put in \$15 million and then this fantastic proposal works’. Is it possible to have a two-stage UDF?

A fifth point is the abolition of appeals to VCAT. I think the state government should be very wary about abolition of appeals to VCAT. I take the point that often community groups say, ‘VCAT is a developers’ court’, but I think the important thing is the impact on the behaviour of council with the potential threat of VCAT. At the moment the only person who can go to VCAT is the developer. The councillors are often telling us, ‘Look, if we don’t approve this, Peter, they will take us to VCAT’. I think that possibly if the council also thought the public can go to VCAT, that would keep the council on track and stop the council going off track in the way that we say the council has in this case.

The next is a range of independent reports. I have already alluded to the fact that the council refused to commission the full normal range of independent reports, and there should be some appropriate mechanism to ensure this. When I say appropriate mechanism, perhaps the key person here is the Minister for Planning: that when the Minister for Planning gives the authority to council to manage a process the Minister for Planning should also think through how this is to be done and specify at that stage the sort of independent reports that the council should come up with.

The sixth is the structure — a similar thing. I have criticised, clearly, the fact that the CEO sat on the St Kilda Edge Committee. I think that destroyed any checks and balances within the council. But it may well be that in some cases it is appropriate to have the CEO sit on a similar sort of committee. I think this is something that the Minister for Planning, again, should consider at the start of the process. If you are going to give it to the council to manage, how should the council set itself up? What sorts of checks and balances, Chinese walls et etcetera should be set up at that stage?

There are a variety of documents that we have not got or have received late. The FOI process is pretty slow; it is pretty easy for a recalcitrant council to refuse access to documents and to delay things so that, for instance, we have not got access to that crucial 2004 SGS report or access to the development agreement. I think the state government should not just say the FOI process is satisfactory. Perhaps if we are going to deal public land in this way, there should also be a clear protocol for the sorts of documents that are going to be made available and at the appropriate time.

On time frames; at the various stages there has been very little time available for the community to submit. The state government initially should think about the required time frames.

Finally, on our vision for success, essentially there are three elements. One, we would hope to be able to persuade the state government to chip in some money that means that you can have a much more exciting cultural and entertainment process. Two, the process itself — we think that if we going to have another go at this, we have to think through a proper process; and three, the UDF — we are happy with the UDF. We are happy with that vision. We think that that vision of an entertainment and a cultural centre is appropriate, and we have set down a few dot points there finally about just what sort of precinct that could look like. Thank you very much

The CHAIR — Peter, thank you. Before I move to questions I should acknowledge my colleague, Andrea Coote, MLC, a member for Southern Metropolitan Region, in the audience today.

Peter, I think this is a very comprehensive and thoughtful submission, and I compliment you and the Unchain St Kilda Group on that submission and the detail. More by way of comment I make the point that I accept your case that there has been a failure of process here, that there is much that should be in the public domain that is not. I also indicate a personal view that the reference to the Ombudsman is a very constructive step to get to the bottom of what has gone wrong with this process. I have to say that the way that you have presented the steps in the process is concerning to people. It seems to me, though, and you may want to comment on this, that the crux of the problem is as you have outlined the council is wearing the two hats — both, as you call it, a co-proponent and also as the planning authority. Do you think that that closeness is ever justified or do you think that it is not justified, or is it sufficient in that kind of case if there are third-party rights to appeal?

Mr HOLLAND — I think if we had the normal third-party rights to appeal to VCAT, there would be a lot less concern, not just with the VCAT hearing as I said but the possibility of the VCAT hearing I think would help to keep the council on track. I cannot say whether in all cases it is inappropriate to have these two hats because it may well be that for a smaller development, it is appropriate for the council to wear the two hats. I think if you have a significant development like this, which is \$300 million plus, there is perhaps much greater need for a scrupulous process that separates out those two. In some way there has to be an independent review, some checks and balances, something to make sure that the process does not get off the rails.

The CHAIR — I think your submission is detailed and answers almost all of these questions, and I again reiterate my personal support for a reference to the Ombudsman.

Mr BENNETTS — Chair, can I just make one more comment in relation to the question of the concept of the issues with council wearing two hats: there is another much smaller issue in the city of Port Phillip at the moment involving a skate park being constructed in parklands in Albert Park, directly opposite a number of residences. A significant number of members of the local community feel that there are much better sites for that skate park. The council in that case has been wearing two hats as well. Last Friday the Supreme Court allowed the community leave to appeal a VCAT decision. Its decision was quite scathing of council and effectively the contortion of the democratic process that occurred in that case as a result of the council doing just that — that is, wearing two hats. What the court noted was that there appeared to be evidence of public notice periods, consultation periods et cetera, all being compromised in manners that were disadvantageous to the community and that frankly would not ordinarily have been expected to have happened had the council not been wearing both hats.

The CHAIR — One concern I have and you may want to comment on this — I am not making an allegation in this particular case — is it seems to me that the process is open under certain circumstances to corruption, and without those checks and balances there is a considerable risk that that could occur in this sort of process in the future.

Mr BENNETTS — I would not for 1 second suggest that there has been any evidence of corruption under these circumstances.

The CHAIR — And I am not.

Mr BENNETTS — If one looks at the situation in New South Wales all I could say is that if you take out that extra element of independence that we have in our system here, we are a hair's breadth away from that being a situation that could readily occur. Yes, without independence there is always an increased risk of that sort of activity.

Mr TEE — Thank you for your very detailed submission. It will be helpful to the committee in looking at the process here and seeing what opportunities there are in terms of mapping out future processes. In that sense it will go towards helping us or certainly helping me to develop me some of my thinking.

I just want to put forward my caution again about being careful what you wish for in the sense that there have been a number of times where communities have complained about matters that they and their council are dealing with being taken away to VCAT. There have been complaints in relation to the actions of the former government, where the former planning minister took matters out of the hands of the community and the local council. There are strongly competing views but I think in this submission there are a number of other detailed issues that I think are worthy of consideration, so I thank you for those.

Mr THORNLEY — Thank you for the very detailed submission. I am still getting my head around all the details so it is a challenge to try and focus on any one element given the range of important issues that you have raised. The issue that is still top of my mind is the issue around alcohol and violence that people are concerned about. It is something that I think actually people on both sides of this particular dispute share a concern about. You have obviously been through this material in a great deal of depth and selected portions of it for our benefit, and I look forward to going through that in more detail. Could you just please outline from what you have read and other experience you may have — I am a bit back to what is good versus bad entertainment — and just help us sort of understand that thinking?

I was a bit confused by the point here that says there is no evidence to suggest that there are increased harms related to the density of licensed premises but that seems to be part of a wider argument that said that there was. I am wondering if you could unpack that for me a little. I am a bit back to the live music, nightclubs, cafes and restaurants being licensed, food available, food not available, live music being available or not available. What makes bigger venues or smaller venues? Either it is the same number of patrons in a wider number of dispersed venues of different types and that sounds like we think that is better but I do not want to put words in your mouth. I want to understand your sense from the materials you have presented and gone through.

Mr HOLLAND — I think that most of the expert evidence that came up to the 2006 parliamentary inquiry indicated that where you have big nightclubs, often there is just not active participation as I suppose there is with live entertainment and smaller jazz-type clubs, but where you have the big beer barns and nightclubs there is a significant increase in violence. There are American and Australian studies that more or less accord with what we are reading in the newspapers about Queen Street and Chapel Street: that it is the big nightclubs that spill people out into the streets, and there is a whole range of social problems that occur as a result of that. I suppose in Melbourne the model would be Brunswick Street. It has its problems, of course, but because it has got smaller venues and perhaps more live music being played, it does not seem to have the same number of problems as Chapel Street and Queen Street.

Mr THORNLEY — It is not just scale, though. The Palais is big but it is a live music venue, and that does not seem to create problems, so what I am hearing you saying is it is a combination of scale and type of venue?

Mr HOLLAND — We have already got a bit of a problem in Fitzroy Street. It is not as major a problem as in Chapel Street and Queen Street, but the tighter the controls get in the city, the worry that we have is that that problem will be transferred to St Kilda.

Mr THORNLEY — We certainly have problems in Acland Street as well.

Mr HOLLAND — If we get the triangle site, then we are going to have a horde of losers on the loose at 2 00 a.m. going from Fitzroy Street via the triangle to Acland Street, and that is going to become a major issue. John has perhaps got some more direct experience.

Mr BENNETTS — Just a couple of comments. I guess I could say at the outset that Unchain St Kilda is made up of a very broad and large number of people from the community, very politically unaligned, and in a similar way we are very acutely conscious that these issues are not about what sort of music types and styles we would all prefer, because the community, I think, has a desire for a broad range of opportunity there.

Looking at it objectively, the things that appear to create community problems are density of patronage in nightclubs, the hours of operation of nightclubs — and the fact is here a lot of these tend to be very late-night venues, and we are talking about a location that is very proximate to a densely populated residential area, and so from an amenity point of view it is an immediate issue — and I think to some extent we are talking about the range of uses and particularly the large size of a number of the licensed venues, which tends to turn them into predominantly drinking establishments. Having said that, there is a recognition and I think a desire by the community to see live music and to see the Palace in some shape or form replicated, but what we have seen here is a substantial expansion on the number of licence venues in terms of both size and patronage.

Mr THORNLEY — So a venue like the Palace, in your mind, would be optimal?

Mr BENNETTS — Yes. I think the community is quite happy with the concept of replicating what was there, improving upon what was there and perhaps even expanding it, but what we are seeing is more than a

doubling of licensed venues in terms of patronage and a much different licensing regime that allows later night venues as well.

Mr THORNLEY — If, for example, there were some restriction placed — by whichever authority might be drawn in by your many suggestions — to have a larger number of smaller venues incorporated, is that likely to improve the situation?

Mr BENNETTS — I think the evidence would suggest that it may improve it somewhat, but nonetheless a concentration of late-night licensed venues that predominantly rely for their trade on selling alcohol in a close environment like that still leads to concerns. I think our submission — the community's submission — would be certainly to have licensed venues but to reduce the size and be much more aggressive on the opening hours.

Mr THORNLEY — Just on the opening hours, if I may, I have heard competing schools of thought: some people say it is good to have rolling opening hours so everyone does not pour out into the street at once, and other people say that that is a legislated pub crawl. Is there a unified view on that from your group?

Mr HOLLAND — I do not think so, but I think that is where we need some sort of discussion on this, and that is why I am suggesting that perhaps this committee could ask Liquor Licensing Victoria, Victoria Police and the relevant government ministers perhaps to auspice something perhaps just for the St Kilda triangle or perhaps wider. I do not think we have a particular position there. We do not have the expertise.

Mr GAZZARD — There is also a concern, of course, not just in terms of the nightclubs but also in the retail areas, that the council and the developer keep saying, 'We're going to ensure that there won't be chain stores, that there will be small boutique sort of shops and that nightclubs will be of a certain sort', but of course there is no guarantee that that is going to necessarily happen in 18 months time or two years time. It is all subject to change. You might create smaller venues, but if they do not work out commercially, they will all get pushed into one. The SGS cost-benefit study had a great line. It said it did not see that there was going to be any net increase in violence and alcohol-related crimes because of the triangle, as it would just move from somewhere else in Melbourne to St Kilda. There is no net increase, but it is a bad deal for the citizens of St Kilda.

Mr THORNLEY — Thank you. I might say that I am going to have to go soon, since we were scheduled to finish at 1.30 p.m., so I apologise to you or any other witnesses if I cannot remain for other testimony.

Ms PENNICUIK — I have no questions, Gentlemen, but thank you for your detailed submission, in particular the eight points on pages 25 to 26, which I think go a long way to encapsulating some of the ways forward in terms of this really complicated issue and, without going over it again, what has gone wrong and how we got there. I am quite concerned about the structural issues, which, I have said before, have led us to this position. I think those eight points are going to help very much with perhaps preventing that or providing advice on what this committee would want to do to take Victoria into the next 50 or 100 years in protecting public land and better using public land.

That is a long-term view, but what is before us now is a possible disaster from my point of view in terms of the development of that land, so we need to look at the immediate actions we can take whereby everybody can take a step back and, as you say, discuss the implications in terms of liquor licensing, retail development et cetera. I think it is about people in the community, this committee and others still putting some pressure on the council to slow down the process and rethink before it is too late. That is what I am taking from what you are saying. If you have got any comment on that, I am happy to hear it.

Mr HOLLAND — One possibility is to ask the council to extend the time and have another look at things, but I doubt whether the council is going to do that.

Ms PENNICUIK — I did ask council earlier.

Mr HOLLAND — I think that it really has to be the state government coming in, perhaps via the priority development panel or the minister, or else the Ombudsman looking at things and saying, 'This really did go off the track. It has been mismanaged', and that may persuade the government to then say, 'Let's start the process up again'.

Mr O'DONOHUE — I have no questions, but thank you very much for a detailed submission. I think you have really hit the nail on the head with a number of issues you have raised.

Mr KAVANAGH — Thank you for your very professional submission — and very logical submission, too, I think — but I did want to ask you this: you were concerned about people not being attracted to Melbourne because of this development — —

Mr HOLLAND — No, sorry, not so much 'not attracted to Melbourne because of the development', I think it is important for Melbourne's future to build on this reputation as a livable city, and it seems to me that nobody is really all that excited about coming to the St Kilda triangle because it has got a full-line supermarket and some drinking venues for 18 to 20-year-olds. But if this were developed in some other way — let us call it Jeff Kennett and Kevin Rudd Land or something, some fantasy thing that was like Luna Park or the Palais, with nowhere else in Melbourne like it — this special place would be contributing to that feeling of Melbourne being a sophisticated, exciting and interesting city, and somewhere where you want to live. That was the sort of point that I was trying to make.

Mr KAVANAGH — You do acknowledge, though, that this area — and in particular the triangle area there — has by Melbourne standards an ancient tradition, really, of being a centre of entertainment?

Mr HOLLAND — Yes, that is right. And it is part of St Kilda's heritage to be a tourist destination. I think that is something we should build on. That is why I think that the UDF is quite right — to have an exciting entertainment and cultural centre there is terrific.

Mr KAVANAGH — Thank you.

The CHAIR — I thank the three of you for your fantastic contributions. We will certainly be in contact further on these matters.

Witnesses withdrew.