



ST KILDA TRIANGLE SITE

DEVELOPMENT PLAN

CONSIDERATION OF SUBMISSIONS

DECEMBER 2007

Matrix Planning Australia Pty Ltd
A.C.N. 096 741 552

2nd Floor, 50 Budd Street,
Collingwood Victoria 3066

Tel: +61 (3) 9419 3222
Fax: +61 (3) 9419 3244

CONTENTS

1	INTRODUCTION.....	1
2	ISSUES RAISED IN SUBMISSIONS.....	3
3	RESPONSE TO ISSUES RAISED IN SUBMISSIONS	5
4	CONCLUSIONS AND RECOMMENDATIONS.....	21

1 INTRODUCTION

The St Kilda Triangle site is the subject of a Development Plan Overlay (DPO1: The Triangle Site - St Kilda) under the provisions of the Port Phillip Planning Scheme. This overlay requires that before a planning permit can issue for any use or development permitted under any other planning scheme control a development plan must be prepared to the satisfaction of the responsible authority. Any subsequent permit that issues must be generally in accordance with the development plan and must include any conditions or requirements specified in a schedule to the overlay.

Importantly, any permit application made under any provision of the planning scheme which is generally in accordance with the development plan is exempt from third-party notice, decision and review rights.

Schedule 1 to the Development Plan Overlay includes the requirement that before deciding to approve a development plan, Council as the responsible authority, must advertise and display the plan for public comment for no less than 28 days and must consider any public comments received.

A development plan has been prepared for the St Kilda Triangle site and has been on public display for 28 days. We understand the 28th day was the 29th November 2007.

Matrix Planning Australia Pty Ltd has been appointed by Council to provide an independent assessment of those submissions. Specifically our instructions have included:

- Assess the written submissions received by the responsible authority when the development plan associated with the St Kilda Triangle site is advertised as required by Schedule 1 of the Development Plan Overlay;
- Within 7 days of the end of the notification period, write a report to the Council outlining the validity and/or 'weight' that, in the opinion of the independent planner, the responsible authority should give to the submissions received.
- The report should outline options available to the Council, including any conditions, upon which any approval might be based.
- The report should have regard to the planning application, the submissions received and the applicable planning control including incorporated documents.
- The report will form a separate report to Council as well as being referred to in the planning officer's report to Council. The planning department will have regard to the report in the same way that it would have regard to an internal referral, eg. heritage adviser or traffic engineer.
- Unless otherwise advised, the independent planner should only have regard to submissions received within the 28 day exhibition period. Council's

Planning Department are to assess submissions received after this time.

In preparing this report we have had regard to the following documents:

- All submissions received up to the 29th November 2007 that have been provided to us by Council's Planning Department;
- The Land (St Kilda Triangle) Act, 2006;
- Port Phillip Planning Scheme, including the State and local planning policy frameworks and the planning controls contained in the scheme;
- The City of Port Phillip (March 2002, revised December 2003) St Kilda Foreshore Urban Design Framework;
- The St Kilda Triangle Development Plan (October 2007) prepared by BBC Triangle Investments and its consultants. We are instructed that this bound A-3 report is the full extent of the development plan. We have not considered any other plans or documents as constituting the development plan.

We have undertaken various inspections of the site and its surrounding area.

We have not held any discussions with any of the submitters or with the proponent or their consultants.

We have not examined the evolution of the proposal nor the tender that was lodged by the proponent to develop the site.

We are advised that the Council planning officer's report to Council will provide a description of the site and its surrounds, the planning policy and control matrix that applies to the site and will provide a description of the content of the development plan. It is therefore unnecessary for us to set out any of those matters. We will refer to them as necessary in responding to the issues raised in submissions.

We emphasise that our role is not to provide a comprehensive assessment of the development plan and to make a recommendation as to whether or not it should be approved or if approved, in what form it should be approved. That requires a comprehensive net community benefit assessment of the proposal. We have not undertaken a comprehensive net community benefit assessment of the proposal. There may be benefits of the proposal not raised in submissions (99% of which are objections), which we have therefore not considered or considered in any detail. Our role has been limited to the consideration of submissions made to the development plan and to assess the extent to which they have merit. Council's planning officer is undertaking that comprehensive assessment with input from a variety of sources, including this report.

2 ISSUES RAISED IN SUBMISSIONS

The issues raised in submissions can be summarised as:

1. The extent of retail and commercial development proposed is excessive. In particular, whilst retail is not specifically precluded by the planning scheme, it was certainly never envisaged on this scale and as the dominant activity. The 181 retail tenancies proposed on the site do not meet the promise made during the community consultation processes of only some retail being provided in a complementary role on the site. Additional shops including an additional supermarket are unnecessary and will constitute an out-of-centre shopping centre adversely affecting Acland and Fitzroy Streets shopping centres. One submitter opposes the multiplex cinema which is considered will adversely affect the Palace Cinema. Another considers that there will be an adverse impact on the retail viability of the St Kilda Baths.
2. Loss of village character. The proposal is inconsistent with the outcomes sought by the St Kilda Foreshore Urban Design Framework, DPO1 and SUZ3. The vision under the Urban Design Framework is for a cultural, entertainment and recreational project with only some retail. The proposal is inconsistent with this vision.
3. Safety, security, crime and substance abuse issues. This is seen to occur as a result of a proposed high concentration of nightclubs and pubs with a total patron capacity of 6,000 persons which will increase late-night pedestrian flow through residential streets and around public spaces, thus threatening the amenity of nearby properties and compromising personal safety and a sense of security in public spaces, especially laneways. The site-specific management plan may well exacerbate the malice in public areas and nearby streets, with those too drunk or disorderly to be let into venues wandering the streets looking for 'fun'. The strip cannot support more live entertainment venues; there are already enough. The nightclubs are located close to the existing residential areas at the northern end of the site behind the Pearl building.
4. Loss of iconic landmarks. Destruction of the divided Esplanade (upper and lower), which has been a distinctive feature of St Kilda since the 1800s, will result in the loss of the Upper Esplanade promenade as a balcony to the theatre of the foreshore and to the activities taking place below and on the water. The siting and height of the new building against the Palais undermines its iconic landmark status.
5. Loss of important views. Loss of views to Port Phillip Bay from the Upper Esplanade. The siting and height of new buildings, notably the Pearl and

Ogee, will obstruct sea and beach views and should be removed. The top floor of the Linden building will obstruct iconic views to the Palais and Luna Park, and should be deleted. Existing view-lines and important seascape vistas are removed to leave only the horizon visible. Under the development plan, Views 2, 3, 7 and 8 show the entire loss of sea views from The Esplanade. Loss of the views from the Mandalay apartments and the reciprocal loss of views from the foreshore to the Mandalay apartments due to the proposed Pearl building.

6. Increased traffic. The scale and expected numbers of visitors to the site means that entry streets into St Kilda such as Carlisle and Barkly Streets, Marine and Beaconsfield Parades will become even more blocked. At present on any sunny day on the weekend traffic delays are intolerable and residents are unable to access their dwellings.
7. Parking. Provision of parking at the site will do nothing to alleviate either the traffic flow problems or the parking pressure on nearby streets. Even with resident permits it is difficult to find a parking spot in nearby streets. Inadequate car parking is proposed.
8. Inadequacies of management plan for restoration of Palais Theatre. Loss of other heritage features. The other heritage features include the grassy slopes (as existing), toilets under The Upper Esplanade and pylons on the Upper Esplanade.
9. The developer has not provided Council with an Operational Plan to indicate how proposed site activities will be managed.
10. Supporting submissions. These submissions include qualified support for refurbishment of the Palais, provision of public open space and improved landscaping. One submitter supports the proposed widening of Jacka Boulevard and the provision of bicycle lanes as well as the provision of steps up to the Boulevard (Upper Esplanade?).
11. Loss of public open space. More public open space should be provided - what is proposed is a reduction of existing public open space.
12. The plans provide insufficient detail.
13. No analysis provided of the overshadowing impact on Mandalay apartments.
14. Overlooking into Mandalay apartments from the Pearl building.
15. Misuse of public land for commercial development.
16. The proposal should include an ice skating rink, cabaret, bowling, mini-golf and a wax works.
17. The proposed billboard on the hotel should be removed.
18. Unattractive interface with Luna Park; loss of views to Luna Park; overshadowing of Luna Park; improved pedestrian connectivity with Luna Park and St Kilda Triangle site; Construction Management Plan should be

prepared now.

3 RESPONSE TO ISSUES RAISED IN SUBMISSIONS

Our assessment of and response to the submissions is outlined below:

1. The extent of retail and commercial development proposed is excessive.

Response

The exhibited development plan does not indicate the number of retail tenancies that are proposed, and presumably the figure of 181 tenancies derives from previous information distributed. The development plan itself is not specific about the number and size of the retail component other than to indicate the provision of a basement supermarket and fresh food market and a range of fashion based retail tenancies catering to all walks of St Kilda life. The Traffic and Car Parking Assessment included at Appendix A to the development plan indicates a total retail provision of 24,748 square metres of floor area.

The key to consideration of this submission is a consideration of activity centre policy.

The State Planning Policy Framework of the Port Phillip Planning Scheme seeks to encourage the concentration of major retail, commercial, administrative, entertainment and cultural developments into activity centres (including strip shopping centres) which provide a variety of land uses and are highly accessible to the community.

On a broad view the St Kilda Triangle site could be considered as part of a wider activity centre comprising both the Fitzroy and Acland Streets centres. This is certainly the view taken by the authors of the development plan who state:

“Whilst it could be argued that Fitzroy and Acland Streets operate as distinct activity centres, we consider it is appropriate that the whole of the area is planned as an integrated precinct with a number of major activity ‘nodes’. A well planned and executed vision for the Site would create the third major node within the activity centre and linkage between existing activity nodes.” (page 29)

This view is supported by the Melbourne 2030: Metropolitan Strategy which identifies St Kilda as a major activity centre, without differentiating between an activity centre focused on Acland Street, Fitzroy Street or a combination of both.

Certainly, the St Kilda Triangle site is located very close to the Acland Street retail strip and there is a strong synergy between the site and Acland Street, suggesting that they are part of the same activity centre.

Council's Municipal Strategic Statement (MSS) takes a somewhat narrower view. It applies the term 'retail centre' rather than 'activity centre', which would imply a smaller geographic extent primarily limited to the existing retail offer. It differentiates between the Acland Street and Fitzroy Street retail centres on the Retail Land Use Framework Plan (Clause 21.05-10) and does not identify the St Kilda Triangle site as being part of a retail centre.

Nevertheless, the MSS uses terms such as 'key activity destination' and 'principal activity node' to describe the St Kilda Triangle site.

However, even if the St Kilda Triangle site is regarded as part of a broader activity centre, the question arises as to whether this is an appropriate location for mainstream convenience shopping including provision of a supermarket. The land is not located in a Business 1 Zone, where mainstream convenience and comparison shopping are normally provided and the provision of retail facilities is not identified in the SUZ3 Purposes.

The St Kilda Triangle site is not currently used for mainstream retail purposes and the provision of a supermarket on the site would lead to a further fragmentation of the supermarket offer, split between Acland Street, Fitzroy Street and the St Kilda Triangle site. This needs to be balanced against the benefits that a supermarket and associated convenience retail facilities on the site would provide.

Although no Economic Impact Assessment forms part of the development plan it is understood that supermarkets in Port Phillip generally and St Kilda more specifically (as well as other areas of Port Phillip) trade well above average levels and with high levels of escape expenditure to other centres, suggesting there is capacity to accommodate additional supermarket floor space.

It is also understood that there are limited opportunities in the existing retail centres to accommodate such floor space expansion, a factor contributing to the assessment of net community benefit for provision of mainstream retail facilities over the St Kilda Triangle site.

We consider that this is a significant and legitimate issue raised in submissions for Council to consider. We understand that Council will receive specialist input from its Strategic Planning Unit as to how the St Kilda activity centre should be defined, as well as consideration of this matter in the Council planning officer's report.

The specific comments in relation to the impact of the multiplex cinema on the existing Palace Cinema and the impact on the retail offer at the St Kilda Sea Baths would be determined by Council's view as to what constitutes the St Kilda activity centre.

2. Loss of village character. The proposal is inconsistent with the outcomes sought by the St Kilda Foreshore Urban Design Framework, DPO1 and SUZ3.

Response

The Land (St Kilda Triangle) Act and the planning policy and control matrix contemplate a significant degree of change to the St Kilda Triangle site, with resultant changes to the character that presently exists on the site. Therefore a change of character of the site in its broader St Kilda setting is not regarded as a significant issue. The change of character that is to occur should implement a vision or desired character expressed by the planning policies and controls.

This issue is similar but subtly different to the first issue. It again raises the issue of substantial retail and commercial floorspace proposed as part of the development plan proposal. It is different in that it is not an activity centre argument, but rather calls up the more specific vision that the planning scheme expresses for the St Kilda Triangle site.

The St Kilda Foreshore Urban Design Framework specifically deals with the St Kilda Triangle site at pages 40-41. The overall vision is stated to be:

“A new public space to the west of a reinvigorated Palais Theatre, supported by a variety of indoor and outdoor entertainment and cultural venues envisaged in a new contemporary building. The feasibility of retaining and improving the existing Palace should be assessed as an option.”

Entertainment and culture are the activities that are the core of this vision.

However, the Urban Design Framework also seeks to ensure the continued viability of existing landmarks and attractions and to encourage new uses that will support existing attractions and assets. The Framework emphasises the imperative that public benefit is maximised by private investment in facilities that maintain the traditional, cultural use of the site. This could be interpreted to include activities and facilities other than culture and entertainment to assist in providing that viability. On page 41, under the heading ‘Proposals’, retail activity is specifically identified but appears to be treated as a relatively minor component:

“Construct a new building at the rear of Palace Theatre to provide for backstage facilities. Preferred supporting uses for this building would relate strongly to the precinct’s cultural and entertainment heritage, and could comprise dance and entertainment venues, cinemas, galleries, a bar or nightclub. Other possible uses may include a small hotel, reception and conference centre, restaurant, artists’ studios or retail....

Create a predominant new public plaza west of Palais Theatre, incorporating some structures for shops, studios and activities to front it. Some of these can be located under a viewing platform extension to

Upper Esplanade.” (Our underlining)

Council’s MSS in dealing with Tourism contains a specific land use policy for the St Kilda Triangle site:

“Support renewal of the St Kilda Triangle Site to offer a range of cultural tourism and recreational facilities, and establish the site as a principal activity node within the St Kilda Foreshore area.”

There is no explanation of what constitutes a ‘principal activity node’ and whether this would include a significant amount of retail activity. If a significant proportion of retail activities were envisaged it is our view that the MSS would specifically identify this outcome in addition to the stated cultural tourism and recreational activities sought for the site.

Schedule 3 to the Special Use Zone identifies the principal uses as being a variety of public spaces and entertainment and cultural venues.

The St Kilda Foreshore Area Policy, which includes the Urban Design Framework as a reference document and seeks to apply that document as part of its Policy Basis, includes specific policies for the St Kilda Triangle site. The relevant policies with respect to land uses include:

“Encourage an integrated renewal of the site as a key activity node within the Foreshore, emphasising the provision of a new public space, a revitalised Palais Theatre, and a variety of indoor and outdoor entertainment and cultural venues.

Maximise the public benefit through private investment in facilities that maintain the traditional cultural use of the site and allow for new contemporary leisure activities....

Encourage the creation of a public plaza on the site to link new and existing buildings, and provide community space capable of use for a range of purposes....

Encourage the relocation of existing car parking on the St Kilda Triangle site underground, in association with any new development.”

The above passages suggest that a substantial retail component is not envisaged for the site although a mix of uses including retailing that is complementary to the core entertainment and cultural outcomes is encouraged.

There may well be benefits of including a substantial retail component in the proposal if it can be shown to assist with the viability of cultural entertainment and recreational uses. However, that outcome is not set out under the Urban Design Framework incorporated into the planning scheme, in the Local Planning Policy Framework or in the zone purposes or DPO1 decision guidelines.

We therefore consider that submissions which claim that the development plan conflicts with the stated vision for the St Kilda Triangle site have

considerable merit.

3. Safety, security, crime and substance abuse issues (associated with licensed premises).

Response

Whilst the development plan is not particularly specific about the number and patronage of taverns and nightclubs, the Traffic and Car Parking Assessment indicates a tavern/pub capacity of 1,500 patrons and a total nightclub capacity of 4,640 patrons giving a combined capacity in excess of 6,000 patrons.

The provision of taverns, nightclubs, restaurants, cafes and other recreational uses is consistent with the outcomes sought for this site under the planning policies and the planning control purposes.

This is likely to lead to potential conflicts with nearby and surrounding residents.

The development plan indicates that the main entry to the nightclubs located at the northern tip of the site will be through The Rambles at its Jacka Boulevard frontage so as to minimise the overspill of nightclub patrons to the Upper Esplanade and surrounding residential areas. This broad design approach appears to be appropriate in terms of ensuring the overall design incorporates security and safety measures so as to separate the concentration of evening patrons from residents.

The development plan includes a management plan which is fairly generalised with respect to licensed premises. At this stage of the process that level of generalisation is to be expected. It would be most difficult to finalise management strategies and controls for individual premises at this stage.

Whilst a nightclub will not require planning permission under the zone provisions, a tavern and hotel will. Planning permission will also be required for buildings and works, which will enable consideration of more detailed design considerations at the permit application stage. In addition, all new licensed premises will be required to seek a permit under the licensed premises provisions at Clause 52.27 of the planning scheme. This will enable more refined management plans to be required as conditions on permits if necessary, with possible subsequent monitoring of impacts through planning permit and liquor licence conditions. However, it is noted that these planning applications will not be subject to third-party scrutiny so Council will have an important role in ensuring the amenity of existing residents is maintained.

Therefore, we consider this to be a legitimate concern but is capable of refinement and further consideration, management and control at the planning permit application stage.

4. Loss of iconic landmarks.

Response

The closure of the Lower Esplanade as a road is contemplated under the Land (St Kilda Triangle Act) 2006. Our reading of the Act indicates that the Lower Esplanade is already closed as a road.

The submission that the Upper Esplanade promenade will no longer be a balcony to the theatre of the foreshore and to the activities taking place below and on the water has merit. However, the argument in response is that the level of the Upper Esplanade will be extended seaward and the balcony from which to view activities below and on the foreshore will occur from the seaward side of the Grassy Slopes and the Yellow Brick Road. These locations are closer to the foreshore than the Upper Esplanade and are proposed to be located at a similar elevation to that of the Upper Esplanade (refer cross-sections 2-4, pages 50-51 of the development plan).

The principal view towards the Palais Theatre is towards its frontage. Its western side is extensive in both its height and breadth and demonstrates significantly less architectural detailing and grandeur than the front façade, but is still of significance. Cross-sections G and H on page 44 of the development plan indicate that the proposed new buildings will almost extend to parapet height of the Palais.

The St Kilda Foreshore Urban Design Framework contemplates the removal of the former Palace Entertainment Complex and the creation of a larger building over the western portion of the site to replace its entertainment and cultural functions. The Urban Design Framework also recommends the creation of a new public plaza, which whilst involving the creation of new buildings would be located under a terraced extension of Upper Esplanade, presumably at a level similar to the Upper Esplanade.

Therefore, whilst the proposed new building immediately west of the Palais will obscure almost all of its western wall this lost aspect is not the Palais' principal aspect. However, the size of the building proposed under the development plan is at odds with that contemplated by the Urban Design Framework.

We therefore consider that this submission has merit.

5. Loss of important views.

Response

The maintenance of various views is listed (and expressed in different terms) in Clause 22.10: St Kilda Foreshore Area Policy of the planning scheme, in the St Kilda Foreshore Urban Design Framework, the DPO1 Decision Guidelines and in the SUZ3 Purposes. It is acknowledged that what is being considered here is the approval of the development plan under the DPO1, and not a use

and development permit under the zone provisions. However, the DPO1 decision guidelines, which Council must consider when assessing a development plan include the purpose of the zone and any relevant local planning policy. It is therefore relevant to consider the view lines identified under the zone and the relevant policy.

The following table identifies the various view lines specified under the above policies and controls and how they are to be treated, eg whether they are to be protected, not blocked, retained, improved, enhanced or just considered.

Table 1: View Lines Identified By The Planning Scheme

View Line Identified	How the Development Plan Responds
<p>Clause 22.10: St Kilda Foreshore Area Policy</p> <p>“Determine design parameters, including the height of new buildings, on the Triangle site based on the need to maintain... views and vistas, including views from The Upper Esplanade”</p>	<p>The provision does not require the maintenance of views and vistas including views from The Upper Esplanade, but rather calls for design parameters to be determined that maintain those views and vistas. As far as we are aware Council has prepared no parameters. The development plan includes various urban design considerations that influence the height of proposed new buildings.</p>
<p>St Kilda Foreshore Urban Design Framework (pages 40-41)</p> <p>“The land west of the Palais needs to be kept relatively open to preserve the views from the Upper Esplanade”</p>	<p>This presumably refers to the site of the former Palace Entertainment Complex, which still existed at the time the UDF was prepared. We interpret the UDF as suggesting the Palace should be removed and a new building provided at the western end of the site for cultural activities.</p> <p>The development plan does not interpret the UDF in this manner and on the basis that the Palace previously blocked views to the horizon identifies this as the basis for the proposed Linden building and proposed buildings adjacent to the Palais blocking views to the horizon from the Upper Esplanade immediately west of the Palais (Refer View 3 on page 52 of development plan).</p> <p>The development plan therefore conflicts with this outcome sought by the UDF if our interpretation of the treatment of The Palace is the preferred one.</p>

View Line Identified	How the Development Plan Responds
<p>“New buildings need to be carefully sited and kept relatively low so as not to block views to Palais Theatre, or important seascape views from Upper Esplanade. It is particularly important to retain the serial seascape and beachfront views and glimpsed vignettes across the St Kilda Triangle site from locations, such as the Jesse Fairchild Memorial on Upper Esplanade to:</p> <ul style="list-style-type: none"> ▪ Williamstown ▪ the Sea Baths domes ▪ Stoke House restaurant ▪ Catani Arch ▪ the horizon.” 	<p>The provision of a forecourt to the Palais Theatre which is clear of buildings when viewed from the east will improve the eastern aspect towards the Palais (Refer View 1 on page 48 of the development plan).</p> <p>View 7 on page 56 of the development plan indicates that despite the Linden building to the north-west of the Palais that views towards both the Palais tower and Mr Moon at Luna Park will be maintained. It is noted however that the UDF does not single out just the Palais tower but refers to the Palais generally. Where this view is taken is the best-case location. As the viewer approaches along the Upper Esplanade footpath the Linden building will block views of the facade of the Palais to a greater extent, because although the Linden building is lower than the Palais it is closer to the viewer.</p> <p>The effect on views to the seascape from the Upper Esplanade will be variable with Views 2 (page 49 of the development plan), 3 (page 52), 7 (page 56) and 8 (page 57) indicating seascape views from the Upper Esplanade being removed or reduced.</p> <p>The Jesse Fairchild Memorial is a representative point along the Upper Esplanade to assess the impact on various views where a small viewing platform is available. From this point:</p> <ul style="list-style-type: none"> ▪ The existing view towards Williamstown is partly already blocked by foreground vegetation and is not clearly visible. The proposed Pearl building will reduce the available view from this location. ▪ The Sea Baths domes are just visible above foreground vegetation and will still be visible. ▪ There are presently clear and uninterrupted views towards the Stoke House restaurant which will be lost as a result of the proposal (Refer cross-sections 2-4 on pages 50-51 of development plan). ▪ There are presently clear views to the Catani Arch which will be completely blocked at this location by the Ogee building (refer to View 8 taken from Robe Street - the fountain is located opposite Robe Street, and the diagram on page 77 of development plan). ▪ As indicated, existing seascape views will be generally reduced. <p>Therefore, submissions concerned about loss of views from the Upper Esplanade towards various features have significant merit.</p>

<p style="text-align: center;">View Line Identified</p>	<p style="text-align: center;">How the Development Plan Responds</p>
<p>“Decisions on any new built forms on the site must also take into consideration the views towards the Luna Park entrance - Mr Moon - and St Kilda Hill from the view arch at the lower Foreshore level between Upper Esplanade and the Beach.”</p> <p>“Replace the Palace Entertainment Complex building with an improved, contemporary building adjoining a new plaza, which retains views from Upper Esplanade to the horizon....”</p> <p>“Protect views to the entrance of Luna Park, including unobstructed views from Upper Esplanade.”</p>	<p>View 4 (page 53 of development plan) indicates that whilst some view corridors will be maintained, views towards St Kilda Hill will be significantly reduced. The development plan does not provide any detail of the effect on the view towards Mr Moon from this location.</p> <p>It is noted that the provision is not a requirement to retain the views but rather the views are a consideration in determining new built form.</p> <p>Refer to above comments. As indicated, a plaza adjoining the Palais is not proposed, but rather the former presence of the Palace is used in the development plan to justify built form that does not provide a view to the horizon from the Upper Esplanade.</p> <p>Views towards the entrance to Luna Park from the Upper Esplanade are largely protected and unobstructed as a result of the proposal.</p>
<p>DPO1 Decision Guidelines</p> <p>“The impact on existing view-lines to and from the Palais Theatre, Luna Park and important seascape views to and from the Upper Esplanade.”</p>	<p>As indicated, the view lines to the Palais Theatre will be reduced as viewed along the Upper Esplanade (Refer View 7, page 56) and from St Kilda Pier (Refer View 9, page 58).</p> <p>View lines to the entrance to Luna Park from the Upper Esplanade are unaffected by the proposal in both an east and west direction.</p> <p>Seascape views from the Upper Esplanade vary and will be significantly reduced and in some directions eliminated. Views to the Upper Esplanade will also be significantly reduced (Refer View 4, page 53).</p>

View Line Identified	How the Development Plan Responds
<p>SUZ3 Purposes</p> <p>“To ensure that the height, siting and design of new development protects and enhances important views and vistas, including:</p> <ul style="list-style-type: none"> ▪ Panoramic views of Port Phillip Bay and the horizon from The Upper Esplanade. ▪ Direct views of the Foreshore Reserve from the Upper Esplanade. ▪ Views to the Esplanade and St Kilda Hill from the Foreshore Promenade. ▪ Views towards landmark buildings and structures from the Upper Esplanade, and the Foreshore Promenade including the Palais, Luna Park, and Catani Arch” <p>“To encourage new development which creates new vistas to and from the Triangle Site.”</p>	<p>The view lines identified are not only sought to be protected but also enhanced.</p> <p>As indicated, the panoramic views of Port Phillip Bay and the horizon from the Upper Esplanade will reduce and in some places be eliminated (Refer View 2 page 49, View 3 page 52, View 7 page 56, and View 8 page 57).</p> <p>Views of the foreshore reserve from the Upper Esplanade will be reduced and in some places will be eliminated (Refer cross-sections 2-4, pages 50-51).</p> <p>The impact on views to the Esplanade and St Kilda Hill from the Foreshore Promenade is difficult to ascertain at the moment as the Foreshore Promenade is currently being reconstructed. However it is expected these views will be significantly reduced (Refer View 4, page 53 and the above cross-sections 2-4 at pages 50-51).</p> <p>As indicated above views towards landmark buildings and structures from, for example, the Jesse Fairchild Memorial on the Upper Esplanade will be unaffected, reduced or will disappear. The view towards the Palais will be reduced, the view towards Luna Park will be unaffected and the view towards Catani Arch will be eliminated. Views from the Foreshore Promenade are more difficult to ascertain because of works currently being undertaken to the promenade, but it is expected that the view towards the Palais will be reduced (Refer View 5 page 54) and the view towards the rear of Luna Park will be reduced from the west and unaffected from the east (Refer View 6 page 55). The view from the Foreshore Promenade to Catani Arch should be unaffected.</p> <p>The proposal includes the building out southwards from the Upper Esplanade utilising the existing slope below which new floorspace and open spaces would be created. This is illustrated in the cross-sections on pages 41-44 and in particular in Section C on page 42. This will result in new view lines on the seaward side of the Upper Esplanade being created, for example, from the new southern edge of the Grassy Slopes and from the proposed meandering Yellow Brick Road. These new view lines are illustrated in cross-sections 2-4 (pages 50-51). New vistas are also created as illustrated in View 4 on page 53 and View 8 on page 57.</p>

The above analysis indicates that whilst some view lines identified in the planning control and policy matrix will be retained a number of existing view lines from public areas will be reduced or eliminated, and in this regard submissions regarding loss of existing views are valid.

However, whilst there will be a loss of views, for example from the Upper Esplanade, new view lines from new, more elevated public areas are created where they currently do not exist.

Some submitters have raised the issue of loss of views from the Mandalay apartments as a result of the development of the Pearl building directly opposite. The Victorian Civil & Administrative Tribunal has regularly maintained that unless view protection from the private domain is specifically identified in the planning scheme, views are to be treated as one aspect of the amenity of an area. In relation to the St Kilda Triangle site view retention is only sought from the public domain. The St Kilda Foreshore Urban Design Framework contemplates a new building to provide replacement cultural and entertainment activities (replacing the former Palace Entertainment Complex) over the western portion of the site at a scale and level of floorspace that exceeds the former Palace. The Mandalay apartments are located opposite this western portion of the site.

It is expected that angled views in both directions from the Mandalay apartments around the Pearl building will continue to exist to a limited extent and in the context of the planning controls and policies which contemplate a fairly substantial building over the western portion of the site we do not regard retention of southward seaward views over the St Kilda Triangle site from the Mandalay apartments as a reasonable planning outcome.

6. Increased traffic.

Response

We are instructed that Council's traffic engineers will be providing a more informed and more detailed response on traffic management issues.

7. Parking.

Response

We are instructed that Council's traffic engineers will be providing a more informed and more detailed response on the adequacy of car parking.

8. Inadequacies of management plan for restoration of Palais Theatre; Loss of other heritage items.

Response

We are instructed that Council's heritage adviser will be providing a more informed and more detailed response on identified heritage matters.

9. The developer has not provided Council with an Operational Plan to indicate how proposed site activities will be managed.

Response

It is not entirely clear what is meant by this submission. The proponent has provided a management plan as is required by the DPO1 requirements. To the extent that it is somewhat generalised with respect to activities which may potentially cause adverse impacts to residents, such as licensed premises, this is dealt with in Item 3 above, noting that there is capacity to seek more detailed management plans for such premises at the planning permit stage.

10. Supporting submissions

Response

Noted.

11. Loss of public open space.

Response

The St Kilda Triangle site currently contains the Palais Theatre, which is not open space, the former Palace Entertainment Complex which has not historically been used as open space, an extensive car park over the western portion of the site, which is not open space and the Lower Esplanade road reserve which has not historically provided an open space function. The main area of open space is the existing grassy slope immediately below The Upper Esplanade. Whilst the steepness of the slope diminishes further southwards, parts of the grassy slope have limited utility as open space due to the slope.

The development plan contemplates the creation of various open space and courtyard areas. Although there is no breakdown of the actual areas in square metres it is considered that a better open space outcome than currently exists will eventuate both in terms of the area provided and its usability and quality. A landscape concept plan accompanies the development plan indicating how in broad terms that open space is to be landscaped.

Under the Land (St Kilda Triangle) Act, the St Kilda Foreshore Urban Design Framework and the SUZ3 purposes, a mix of uses is contemplated over the site. The Act contemplates public open space, retail, tourism, entertainment, commercial and cultural purposes. The Urban Design Framework contemplates a new public space to the west of the Palais Theatre with a variety of indoor and outdoor entertainment and cultural venues. The zone purposes contemplate a variety of public spaces and entertainment and cultural venues.

It should also be noted that the site is not currently zoned for public open space purposes such as a Public Park and Recreation Zone.

In our view submissions about the inadequacy of the proposed open space provision are unable to be substantiated.

12. The plans provide insufficient detail.

Response

Not a great deal of elaboration is given to this submission. However, there are two aspects of the development plan that we regard as providing insufficient detail.

The first is that there is a lack of a comprehensive and detailed assessment against all of the planning scheme outcomes sought by the planning scheme controls and policies. Most notably, not all of the view lines identified by the planning controls and policies are addressed in the development plan, for example, the views towards various objects from the Jessie Fairchild Memorial, as well as others.

The second and more important matter of detail that is lacking is the vague description given to the uses of the various buildings. The parent provision of the Development Plan Overlay requires that the development plan must describe the proposed use and development of each part of the land. There are no annotated plans provided which specifically identify the land uses and activities at each level of each building. The land use descriptions are generally vague and non-committal. For example, the Nolan building will occur over 10 levels including a basement. The top five levels are indicated as being for a hotel, but otherwise the uses and activities are described in the following vague terms:

“The Nolan is a versatile mixed-use building that can accommodate a variety of large format retail/leisure and entertainment/recreation uses over its levels [does the development plan provide for shops at every level?]. An area of lettable space is provided to the basement level for uses associated with the hotel and/or multi level retail tenancies [large format shops?] fronting Jacka Boulevard. Access via lifts and stairs to the upper levels will be provided. At street level the Nolan will reinforce the lively strip shopping character established for Jacka Boulevard [does “reinforce” mean shops will be provided?] At the middle and upper levels larger floor plates could support major retail tenancies [more shops?] or a gymnasium. An outer veneer of restaurants and/or hotel rooms may be combined with large tenancies [the use of which are not stated], whilst taking best advantage of the views and natural light [where is the outer veneer and over what levels does it occur?].” (Our comments bracketed and underlined).

Similarly, the upper level of the Linden building is described as

“... a tenancy suitable for an office, licensed food and drink premises, or a private function room...”

The Vaults are described in the following terms:

“The Vaults are characterised by deep floor plates that extend under the footpath of the Upper Esplanade. They provide the opportunity for larger tenancies including nightclubs and large format retail outlets that do not require natural light...”

The location and size (even in broad terms) of the various land uses is vague. This is compounded by the identification of alternative uses (eg major retail tenancies or a gymnasium) for the same areas. This makes it difficult, if not impossible, to accurately assess the land use impacts of the proposal. For example, the car parking and traffic assessment is based on far more specific land use floor space allocations, but these specific floor space allocations are not contained in the main body of the development plan that describes the content of the development plan.

In our view the development plan fails to describe the proposed use and development of each part of the land, as required by the parent provision of the Development Plan Overlay.

We recommend that if the development plan is approved that the approval be conditional upon a greater level of detail being provided including broad floor plans at each level of each building annotated to show the proposed land use activity.

We note that any subsequent permit must be generally in accordance with the development plan, which would mean some minor use changes would not necessitate an amendment to the development plan. In relation to more significant changes, which are not generally in accordance with the development plan, we note that the development plan can be amended to Council’s satisfaction. We further note that the schedule to this Development Plan Overlay specifies that if the changes are considered to be significant in nature then additional public notice may be required.

13. No analysis provided of the overshadowing impact on Mandalay apartments.

Response

The critical period for overshadowing residential properties is normally taken to be at the Equinox between the hours of 9:00 a.m. and 3:00 p.m. The critical period specified in the Port Phillip Planning Scheme for overshadowing public open space such as the foreshore is the same time period during the day but at the Winter Solstice.

The development plan properly includes Winter solstice shadow diagrams at various times between the hours of 9:00 a.m. and 3:00 p.m. This represents a worse case scenario than the Equinox. The shadow diagrams indicate that

during this period there will be no overshadowing of any other existing dwellings as a result of the proposed development.

We consider that there is no merit to these submissions.

14. Overlooking into Mandalay apartments from the Pearl building.

Response

The standard that is normally applied to ensure unreasonable overlooking does not occur is provision of a minimum separation distance between proposed windows or balconies and existing habitable room windows and secluded open spaces of dwellings of 9.0 metres. The proposed Pearl building is located approximately 50 metres south of the Mandalay apartments. Irrespective of how the Pearl building is used this separation distance is not considered unreasonable in terms of its overlooking impact.

We consider that there is little merit to these submissions.

15. Misuse of public land for commercial development.

Response

The Land (St Kilda Triangle) Act, 2006 redefined the reservation or public status of the St Kilda Triangle site. The Act identifies that the land is reserved for public purposes (unspecified), with Council as the committee of management empowered to “grant a lease of that land for the purpose of the construction or use of buildings, works, facilities or public open space for retail, tourism, entertainment, commercial or cultural purposes”. The proposed uses are consistent with that designation. Therefore, little weight should be given to this submission.

16. The proposal should include an ice skating rink, a cabaret, bowling, mini-golf and a wax works.

Response

Whilst all of these alternative or additional uses would be consistent with the planning policy and control framework they do not form part of the development plan presently before the Council, and it is therefore considered that little weight should be given to these submissions.

17. The proposed billboard on the hotel should be removed.

Response

View 6 on page 55 of the development plan depicts what appears to be an advertising sign facing Luna Park and rising above the height of the proposed Nolan building. The development plan describes it in the following terms:

“On Cavell Street, the Nolan building will be expressed as a series of independent facades. It is proposed that the highest of these is crowned with a panel reserved for artistic imagery. This panel creates a strong visual marker to the site from the southern approach and will provide a

vibrant backdrop to the scenic railway at Luna Park.”

If the structure is an advertising sign and is used for advertising sign purposes, such as the promotion of “angleheaded hipsters” as depicted in the artist's impression on page 55 of the development plan, it would be defined under the planning scheme definitions as a “high-wall, major promotion, panel, sky sign”. A high wall sign other than a business logo or street number, a major promotion sign, a panel sign and a sky sign are all prohibited signs in the Special Use Zone. Council has no discretion to grant a permit for such a sign. Therefore the panel could not be used for any advertising purpose. If its purpose is solely for displaying art it is not an advertising sign.

If the panel is intended to be used for advertising purposes it should be removed or it will be in breach of the planning scheme.

18. Unattractive interface with Luna Park; loss of views to Luna Park; overshadowing of Luna Park; improved pedestrian connectivity with Luna Park and St Kilda Triangle site; Construction Management Plan should be undertaken now.

This submission is made by the operators of Luna Park. No detailed elevations accompany the development plan so it is not possible to accurately ascertain what the Cavell Street frontage of the proposal will be, although it is noted it will include a secondary loading entry/exit. The only image provided is a partial image of the Jacka Boulevard/Cavell Street corner from the east (View 6 page 55 of development plan), which is inconclusive given its small scale. The submission also makes reference to the proposed advertising sign, which is dealt with above.

The loss of views to Luna Park have been dealt with above.

It is not clear what is precisely meant by improved pedestrian connectivity with Luna Park in the context that the main entry to Luna Park is at the Upper Esplanade/Cavell Street intersection (Mr Moon) and pedestrian connections are provided across the proposed forecourt at the front of the Palais along the Upper Esplanade and into the proposed development.

The development plan includes a broad Construction Management Plan and any additional matters involving construction impacts on Luna Park can be included in more detailed plans at the planning permit application stage.

In our view, given that Luna Park is a “private” entertainment venue and not part of the arguably more highly valued foreshore, which should not be overshadowed in mid-winter, the standard that applies to overshadowing private secluded open space, that is, at the Equinox should apply to Luna Park. Although no overshadowing diagrams are provided at the Equinox, the mid-winter shadow diagrams indicate no overshadowing of Luna Park as a result of the development before 1:00 p.m. At 3:00 p.m. much of the overshadowing of Luna Park would be caused by the existing Palais Theatre with some additional overshadowing over the south-western corner of Luna Park from

proposed new development. We caution however it is difficult to ascertain the extent of overshadowing of this area as a result of buildings within Luna Park itself.

In summary, we consider that many of the matters raised by Luna Park are detailed design matters which are only able to be resolved when more detailed plans associated with planning permit applications are made.

4 CONCLUSIONS AND RECOMMENDATIONS

Our brief has been to provide an assessment of the submissions made to the St Kilda Triangle site development plan. It has not been to provide a comprehensive assessment and in particular an assessment of the net community benefit of the development plan. With this in mind we make the following observations about the submissions made to the development plan:

1. Submissions made with respect to the extent of retail and commercial development being excessive appear to us to have significant merit. Ultimately this issue should be considered on the basis of whether firstly, the St Kilda Triangle site is considered to form part of a St Kilda activity centre and secondly, whether this location within the activity centre is one where mainstream retail activities should occur. Whilst the first proposition is arguable, there is little support for the second proposition in the existing planning policy and control frameworks. That support is limited to complementary retail uses and uses which support the viability of existing and new cultural, recreation and entertainment uses. The development plan does not provide any detailed justification on these grounds for the level of retail and commercial activity proposed.
2. Whilst we consider a change of character is inevitable under the planning policies and controls that apply to the St Kilda Triangle site, submissions which state that the development plan is inconsistent with the outcomes and vision sought by the St Kilda Foreshore Urban Design Framework, DPO1 and SUZ3 have considerable merit.
3. The planning policy and control matrix identifies the St Kilda Triangle site as an entertainment node and in our view this implies an expected concentration of licensed premises. This raises the potential for conflict with nearby residents and in this regard submissions about the amenity effects of licensed premises are legitimate. However, we consider that this matter can only and should be dealt with in greater detail at the planning permit application stage. Council's role will be crucial given the removal of third-party notice, decision and appeal rights in relation to any future licensed premises planning permit applications.
4. Submissions relating to a loss of iconic landmarks have merit, particularly in relation to the lost aspect to the western side of the Palais Theatre.

5. Submissions relating to losses of views from the public domain have considerable merit. However, some new views will also be created. Submissions regarding loss of views from the private domain have considerably less merit.
6. Submissions about the inadequacy of open space provision are unable to be substantiated.
7. We agree with submissions that the development plan provides insufficient detail particularly in relation to the proposed use of each level of each building.
8. Submissions regarding overshadowing and overlooking into the Mandalay apartments have no and little merit respectively.
9. In light of the specific legislation that applies to the St Kilda Triangle site we are unable to endorse submissions claiming that the proposal is a misuse of public land for commercial development.
10. Whilst other recreational uses not included in the development plan may be acceptable recreational use of the site consistent with the planning policy and control framework, we disagree with submissions that they should be included in the development plan.
11. In so far as the proposed panel on the proposed Nolan building is an advertising sign it is prohibited by the planning scheme if it is to be used for advertising purposes.
12. The treatment of the Cavell Street frontage opposite Luna Park and impacts of construction on Luna Park are better dealt with at the planning permit application stage when greater detail in relation to both matters would be available.

Our brief also includes the recommendation of any conditions that should be included in the approval of the development plan. Emphasising that our consideration of the development plan is not a comprehensive net community benefit appraisal we consider that at least the following two conditions should be included if the development plan is approved:

1. A greater level of detail be provided including broad floor plans at each level of each building annotated to show the proposed land use activities.
2. The removal of the panel on the east side of the Nolan building if it is proposed for advertising sign purposes.