

**ORDINARY MEETING OF COUNCIL
27 JULY 2009**

1.	UPDATE ON ST KILDA TRIANGLE
LOCATION/ADDRESS:	ST KILDA TRIANGLE, ST KILDA
EXECUTIVE DIRECTOR:	KAY RUNDLE, CHIEF EXECUTIVE OFFICER
PREPARED BY:	KAY RUNDLE, CHIEF EXECUTIVE OFFICER
FILE NO.:	12/02/45
ATTACHMENTS:	1 – ST KILDA TRIANGLE UPDATE TABLE 2 – ST KILDA TRIANGLE DEVELOPMENT AGREEMENT – CONTRACT NOTICES AND VARIATIONS

1. EXECUTIVE SUMMARY

- 1.1 This report provides an update to Councillors on the main topics relating to the St Kilda Triangle Site following the last update on 23 February 2009.

2. RECOMMENDATION

- 2.1 That Council receives the St Kilda Triangle Site Project Update and the progress to date.

3. BACKGROUND AND CONTEXT

- 3.1 This is a regular report to the Council on the major topics concerning the administration of the St Kilda Triangle Project. The report is contained in attachment 1 and 2 to this report.
- 3.2 Following the resolution of the VCAT matter on 18 May 2009, Council has written to BBC Triangle Investments Pty Ltd seeking clarification and advice on a number of matters.

4. CONSULTATION AND STAKEHOLDERS

- 4.1 There is ongoing community interest in this matter. Any review should incorporate community engagement on what elements should be considered when defining liveability.

- 4.2 The Chief Executive Officer chaired senior level officer liaison committee with representatives of the State Government as a replacement for the SKE Committee is progressing.

5. DISCUSSION

5.2 ALIGNMENT TO COUNCIL PLAN

- 5.2.1 The draft 2009-2013 Council Plan contains an action to review the St Kilda Triangle under Strategy 4.4.1 – Strive to ensure that major projects enhance liveability.

5.3 FINANCE / RESOURCE IMPLICATIONS

- 5.4.1 Funds are allocated in the current budget to facilitate progress on this matter.

5.5 LEGAL & RISK IMPLICATIONS

- 5.5.1 Council has a number of legal obligations relating to the Development Agreement that has been entered into by Council, the Developer and the State Government. A review of the Risk Management Plan is currently underway.

6. OFFICER DIRECT OR INDIRECT INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in the matter.

ATTACHMENT 1 - ST KILDA TRIANGLE UPDATE TABLE

1. Administration of the Development Agreement ¹

1.1 Progress on achieving the Risk Assumption Date:²

Requirement	Status
Preliminary Conditions	Achieved on 22nd November 2007.
Secondary Conditions	<p>Date extended to 25 August 2010 or the date which is 24 months after the date on which any Dispute Proceeding in connection with the Developer's Project is finally determined (as defined in the Development Agreement), provided certain requirements are met.</p> <p>As the VCAT decision was settled on 18 May 2009, and the time for appeals lapses after a further 28 days, the deadline is extended to 15 June 2011.</p> <p>The developer may also request a further extension provided the developer is making progress on the additional milestones.</p>

2. Progress on coordination structure to monitor Development Agreement Commitments:

Requirement	Status
Project Coordination Group	
The role of the PCG is to coordinate project delivery and review the progress and quality of works, the performance of the developer and agree any remedial measures required.	<p>To date 18 meetings have been held to monitor progress against contract milestones and discuss matters arising.</p> <p>Some of the key items, at recent meetings, include:</p> <ul style="list-style-type: none"> • Progress on satisfaction of secondary conditions. • Progress on additional milestones. • Financial status of Babcock and Brown. • Heritage Council Registration Committee decision on the Palais Theatre. • Proposed extension of lease of Palais Theatre as the current lease ends on 30 June 2010. • Change to Liquor Licence to allow for Sunday trading supporting increased events being held at the Palais Theatre.

¹ The Development Agreement (with redactions) is on the Council website at http://www.portphillip.vic.gov.au/triangle_background.html#L2 . .

² The Development Agreement contains preliminary and secondary conditions which must be satisfied or waived prior to the Developer being granted a non-exclusive licence to use the Triangle Site and the Upper Esplanade Site and commence construction (The Risk Assumption Date is the date all Secondary Conditions are satisfied or waived)

	<ul style="list-style-type: none"> • Images on hoarding – it was agreed to defer the image details to be placed on the fencing that was erected in mid February 2009 along the Lower Esplanade boundary of the former Palace Nightclub Site. • Site Activation Plan – it was agreed that the Site Activation Plan is not a high priority on either the Council's or BBC's agenda and thus activity to progress the Site Activation Plan be placed on hold.
Design Review Committee	
To provide independent expert architectural and urban design advice to the design development process	Meetings are currently on hold.
Tenancy Review Committee	
To provide a forum for discussion to achieve the St Kilda Triangle Tenancy Guidelines	Meetings are currently on hold.

3. Progress on planning approval

Milestone	Status
Development plan approval	
Development Plan lodged with the Council for statutory approvals	Application for review of DP approval by unchain St Kilda under s149B of the P&E Act1987 lodged 9/9/08. VCAT hearing held 9 -11 February 2009. Decision to dismiss appeal released 18 May 2009.
Subsequent planning permit applications	None received to date. Revised timeline to be provided at the next PCG meeting.

4. Progress on other Triangle Site issues

Issue	Status
<u>Palais Theatre</u>	
Lease administration	On track. Premise inspections are being undertaken.
Heritage Vic (HV)	HV have been briefed on the proposed development. Discussions currently on hold.
Heritage Council of Victoria (HCV) hearing – amendment to Palais Theatre registration	HCV on the 28 April 2009 heard submissions on an amended heritage registration for the Palais Theatre, including the physical area of registration and the registration of various objects. The decision was handed down on 26 June 2009.
Progress on the Palace Site	
Temporary use of the site	Site has been converted to temporary car park site of approx 150 spaces.
Upper Esplanade Market	
Upper Esplanade Market temporary relocation	Temporary relocation on hold.
Progress on Operating Plan	
Operating plan	Has been amended as part of Deed of Variation 2. No further work anticipated in the short term.
Progress on Communications	
Communication plan	Development of a new communication plan is on hold.
Proposed additional Cultural facility	
Proposed national cultural facility above Linden Building	On hold. At the PCG there has been an agreement to extend the date of the final agreement to on or before the SST. This agreement is currently being formalised via an exchange of letters.
Other items	
FOI and Public Release of Conformed St Kilda Triangle Development Agreement	A number of FOI requests have been made in relation to the Triangle. One request is outstanding, however none are before VCAT. The St Kilda Triangle Development Agreement (with redactions), current to 22 November 2007, was posted on the Port Phillip website on 17 November 2008. The Agreement was posted following the withdrawal of a 'reverse application' by the developer. Additional information was released on 28 January after the

Issue	Status
	<p>Compulsory Conference. Further information was released on 3rd February 2009 after further review and negotiation.</p> <p>The current or 'conformed' version of the Development Agreement (as amended by deeds of variation) was posted on the Council website on 22 May 2009.</p>

5. Progress on other St Kilda's Edge issues that impact on the St Kilda Triangle

SKE Committee	
SKE Committee Instrument of Delegation, TORS and membership	<p>Council disbanded and revoked the delegation to the St Kilda's Edge Committee on 25 May 2009.</p> <p>Creation of the liaison committee with representatives of the Victorian Government regarding implementation of the St Kilda's Edge; Foreshore Urban Design Framework, including matters relating to the St Kilda Triangle development is being progressed.</p>

**ATTACHMENT 2 - ST KILDA TRIANGLE DEVELOPMENT DEVELOPMENT AGREEMENT–
CONTRACT NOTICES AND VARIATIONS**

Contract Notices to BBC

1	Commissioning Test Acceptance Criteria (CTAC) and approval of construction costs schedule	Approval of full construction schedule of costs and deferral of the Commissioning Test Acceptance Criteria, until the date the Secondary Satisfaction Conditions	30/10/07
2	Development Plan	Approval of the draft Development Plan by Project Administrator in accordance with the requirements of the Development Agreement	30/10/07
3	Gresham's approval	Approval of Gresham Property Funds Management Limited as a mezzanine financier to the developer	13/11/07
4	Preliminary Conditions	Notice confirming satisfaction of preliminary conditions	22/11/07
5	Advise of assistant Project Administrator	Notice advising of Mr R O'Loughlen as assistant Project Administrator for the period between 5/12/07 to 10/1/08	4/12/07
6	Advice regarding Independent Assessor	Notice advising of agreement to appoint Napier Blakely as Independent Assessor	18/12/07
7	Advice on Secondary Satisfaction Time (SST) new date	Notice approving extension of SST to 25 August 2009	24/9/08
8	Advise of assistant Project Administrator	Notice advising of Mr Paul Smith as assistant Project Administrator for the period between 26/05/09 to 22/06/09	15/05/09
9	Advise of new Project Administrator	Notice advising Ms Kay Rundle as Project Administrator effective 1 June 2009	01/06/09

Variations to DA

1	Variation 1	Extension to SST	10/5/08
2	Variation 2	Further extension to SST	24/10/08