

Chapter 4

Legitimacy by association

4.1 Convincing potential investors of the legitimacy of a land banking project was central to the promotion of the scheme. The committee has noted the use of celebrities and testimonials from people who have increased their wealth through such ventures as an important part of marketing land banking schemes. In this chapter, the committee looks at the way in which promoters also linked reputable, well-known companies and government agencies to their schemes as another means of reassuring investors of their credibility and the commercial viability of the proposed development.

Involvement of reputable third parties

4.2 The committee has serious concerns about the practices of some property development companies, marketing agents, architects and other third-parties involved in providing advice on, or supporting the development of, some land banking schemes. The committee considers that the extravagant promises made by Market First and 21st Century Group about their respective developments would have seemed far less plausible were it not for the associations, often overstated, with brand name companies. In particular, the committee has concerns about the involvement of well-known or supposedly 'independent' companies in two respects:

- some well-known companies were repeatedly mentioned at investment seminars and in marketing material as being engaged with the planning or construction of the developments, but these companies later denied that they were substantively involved with the schemes; and
- investors were referred to lawyers and accountants who had pre-existing business relationships with Market First and 21st Century Group, a practice known as offering a 'one stop shop'.

Project partners

4.3 In their promotion of land banking schemes, both 21st Century Group and Market First referred to connections with respected third parties. For example, as part of his marketing strategy, Mr McIntyre linked his company's land banking schemes with those of the large, well-established companies in the property industry and certain government bodies.¹ One investor, Ms Baxter, told Fairfax Media:

I think the game plan is to construct a money-making scheme using the integrity that comes from reputable names within the building and legal industries, to gain the consumer's trust and confidence so they part with

1 Mr Jamie McIntyre, CEO, 21st Century Group, *Committee Hansard*, 30 September 2015, p. 12.

their money. Meanwhile, the developer has no intention to follow through with the project.²

4.4 The claimed involvement of reputable, brand name companies and government bodies is illustrated through the following case studies involving the Greater Shepparton City Council, SMEC Urban, Peddle Thorp architects, Slater and Gordon Lawyers, and the Victorian government's former Office of Living Victoria.

Moira Park Green City development: former Councillor Mr Milvan Muto

4.5 The 21st Century Property Direct investment seminar, which promoted the Moira Park Green City development outside of Shepparton, featured an influential presentation from Mr Milvan Muto, who at that time was an elected councillor for the Greater Shepparton City Council.³

4.6 In a pre-recorded presentation, Mr Muto outlined the factors that would contribute to Shepparton's future economic growth, including the need for housing construction to meet demand, the potential development of a fast train from Shepparton to Melbourne running at the speed of the Japanese *Shinkansen* bullet trains, and state and federal government funding.⁴ One of Mr Muto's final comments was:

In Shepparton, we only really have one growth corridor for residential and that's the southern growth corridor, which heads towards Melbourne and follows the river and the creek.⁵

4.7 While Mr Muto did not comment directly on or endorse the Moira Park Green City development, 21st Century Property Direct's spruiker, Mr Molnar, made a number of comments immediately after Mr Muto's presentation linking Mr Muto's remarks to the likelihood of the land being rezoned:

Ok, so you have managed to hear from council. What did you get from council? And he [Mr Muto] is obviously one of the councillors. There is only one area where Shepparton can grow and that's where? South corridor.

2 Royce Millar and Simon Johanson, 'Watchdog moves on land banking as investors fear losses', *Saturday Age*, 15 August 2015, pp 8–9.

3 Mr Muto was a councillor for Greater Shepparton City Council from November 2008 until May 2014, when he was disqualified for seven years due to gross misconduct. At different times during his tenure Mr Muto was suspended from carrying out his duties while facing criminal charges as well as complaints of gross misconduct, and in May 2014 he was sentenced to eight months imprisonment after being found guilty of attempting to pervert the course of justice—these legal proceedings were unrelated to Mr Muto's presentation at the 21st Century Property Direct seminar. County Court of Victoria at Melbourne, Criminal Jurisdiction, CR 13-01208, Director of Public Prosecutions v Milvan Muto [https://www.countycourt.vic.gov.au/sites/default/files/recent-decisions/MUTO%20Milvan%20\(22%20May%202014\).pdf](https://www.countycourt.vic.gov.au/sites/default/files/recent-decisions/MUTO%20Milvan%20(22%20May%202014).pdf) (accessed 5 January 2016).

4 Ms Grazyna Monka, *Submission 148*, around 8 to 25 minutes into DVD no. 3.

5 Ms Grazyna Monka, *Submission 148*, around 22 minutes into DVD no. 3.

So the area we are doing the development in is guess where? South! Alright, it is in the preferred growth corridor.

So the government, local government, has designated [that] this is the only area we are going to grow and this [Moira Park Green City] is where they want it to grow. So what do you think the chances are of getting development approval in that area? Like, that's where they want it, that is where they have said they want it.

Many people had the question, 'well, you know is it swamp land?' or 'will it be approved?' so that is why we want the council to tell people 'this is the corridor'. We have given them [the council] a master plan, they understand it, they are actually very happy with it, so it just has to go through a process, and that process will actually take years to do.⁶

4.8 In March 2015, however, the *Shepparton News* reported that Greater Shepparton City Council had received 49 inquiries from investors who were concerned about their investment in the Moira Park Green City development.⁷ The article mentioned that Mr Muto had been listed as a speaker at the 21st Century Property Direct seminars but that the Greater Shepparton City Council was refuting allegations that it had endorsed the development. The newspaper quoted Mr Johann Rajaratnam, the council's sustainable development director, who said:

Council has made it clear to anyone who contacts us about this proposal that council is not involved in this development in any way, nor is the council promoting or endorsing the proposal as part of its longterm development strategy.⁸

4.9 A letter, dated 10 March 2015, from the Greater Shepparton City Council to the Shepparton Newspaper outlined the council's current position in relation to the land which was the subject of the proposed 'Moira Park Green City' development. In its letter, the Council noted that it had not received an application for a planning permit to subdivide any of the land and 'it did not necessarily follow that the Council will approve such an application at any time in the future'. It stated further:

The land is currently not zoned to allow small lot residential subdivisions and is in fact subject to significant flooding which will prohibit development in some areas.⁹

6 Ms Grazyna Monka, *Submission 148*, around 23 minutes into DVD no. 3.

7 Darren Linton, 'Muto Angst', *Shepparton News*, 11 March 2015, p. 1.

8 Darren Linton, 'Muto Angst', *Shepparton News*, 11 March 2015, p. 1.

9 Shepparton News, 'Proposed Moira Park' Green City development', 11 March 2015, <http://www.mmg.com.au/local-news/shepparton/proposed-moira-park-green-city-development-1.89501> (accessed 4 January 2016). One area had been designated an "'Investigation Area"—15+ years' and another an 'Investigation area'.

4.10 Ms Monka told the committee that she had paid \$60,000 for two options in the Moira Park Green City development because of what she perceived to be an endorsement from the Greater Shepparton City Council:

What really sold me to the Shepparton scheme was an endorsement from Greater Shepparton City Council and the respected names of the businesses involved in the project. The attendees were frequently reminded of them. It was like an insurance policy—very much as the other project in 2009—so I paid for a club membership and set up a self-managed super fund—

...

...the most important [consideration] for me—it was like an insurance policy—was that the city council was there and was saying: 'It's real. It will happen.'¹⁰

4.11 As noted previously, the value of options in land banking schemes is inherently tied to the likelihood that the land will be rezoned and receive development approval. As such, any suggestion that the local council (or another government body with planning responsibilities) endorses a development can influence a potential investor's decision to sign up to the scheme. This is especially the case when an individual associated with a local council is used, however subtly, to endorse the development.

Moira Park Green City development: SMEC Urban

4.12 The involvement of SMEC Urban, which has since been renamed as SMEC, in the development of Moira Park Green City was repeatedly mentioned in promotional materials and during 21st Century Group's investment seminars. SMEC provides integrated urban development consultancy services throughout Australia, with the origins of the company dating back to the construction of the Snowy Mountains Scheme.

4.13 Mr Ofer Fridberg, described as a senior urban planner from SMEC Urban, gave a presentation to 21st Century Property Direct's seminar on the strategic background and the planning process for Moira Park Green City, including how the development would fit in with the Greater Shepparton Housing Strategy.¹¹ A slide taken from the 21st Century Property Direct seminar referred to SMEC Urban as industry specialists in master-planned developments that:

...are engaged to construct your property and are selected for their high level of public credibility and industry respect.¹²

4.14 21st Century Property Direct's spruiker introduced SMEC Urban as the 'project manager' for the development.¹³ However, a brochure for the Moira Park

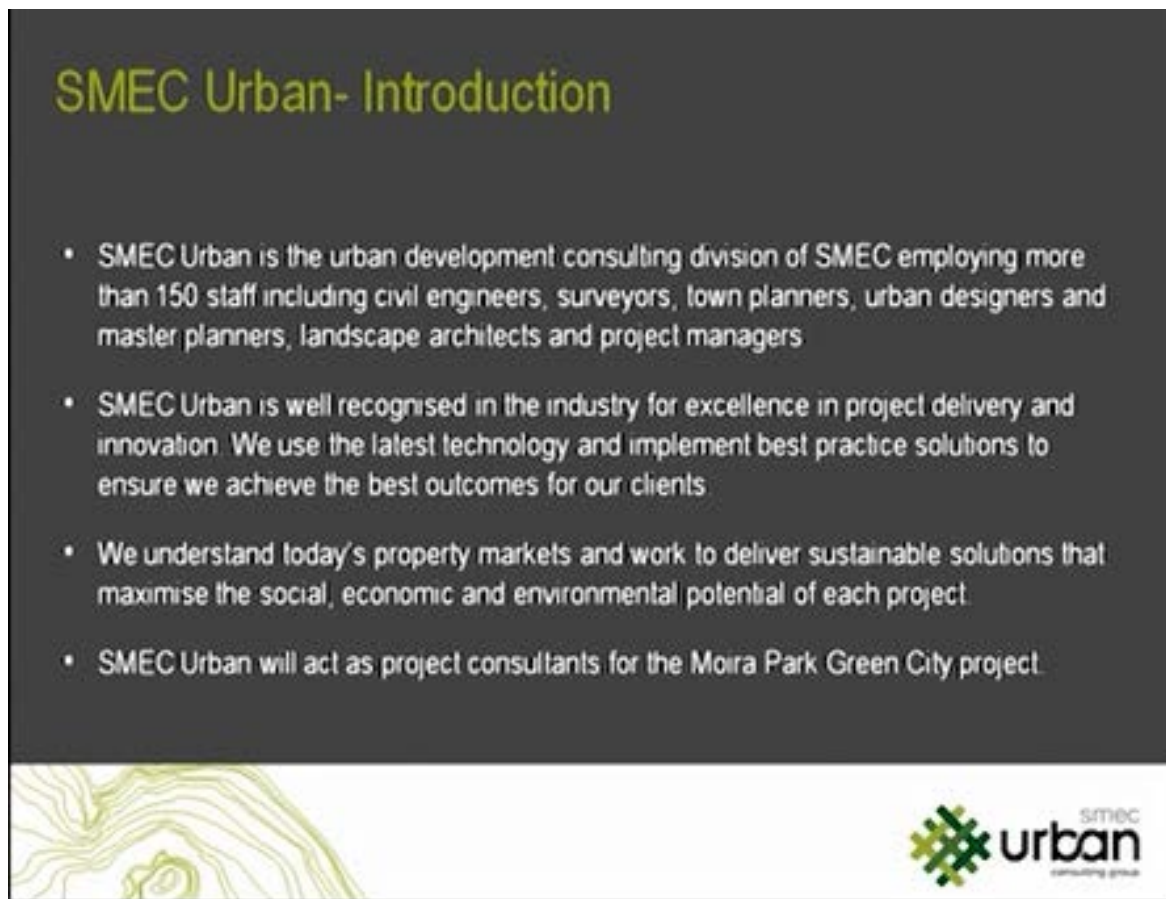
10 Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, pp. 7, 10.

11 Ms Grazyna Monka, *Submission 148*, around 31 and 41 minutes into DVD no. 3.

12 Ms Grazyna Monka, *Submission 148*, around 25 minutes into DVD no. 4.

Green City development and SMEC Urban's own presentation at the 21st Century Property Direct seminar (see Figure 3) described SMEC Urban's role as 'project consultants'.¹⁴

Figure 3: Slide from 21st Century Group's presentation on the Moira Park Green City development¹⁵



4.15 According to SMEC, it had been contracted to provide some services, such as conceptual urban design information, to the Moira Park Green City development but that the relationship had been terminated because of a number of concerns with the process:

Our review of our files relating to the project in question indicate that SMEC terminated the relationship with the client due to unauthorised use of

13 Ms Grazyna Monka, *Submission 148*, around 29 minutes into DVD no. 3.

14 Author unknown, *Moira Park Green City: Shepparton's neighbourhood of the future*, p. [8], http://21stcenturyfileserver1.com/pdf/pd/moira/moira_park_brochure.pdf (accessed 5 November 2015).

15 Ms Grazyna Monka, *Submission 148*, around 32 minutes into DVD no. 3.

SMEC's brand and marketing materials as well as use of information and materials supplied by SMEC beyond their intended use.¹⁶

4.16 SMEC also provided a letter, dated 5 October 2011, that was sent to Mr Nejat Mackali, the Shepparton property developer who was involved with the Moira Park Green City development, terminating the business relationship:

In withdrawing our services from the project, we reinforce the purpose of our work undertaken to date, together with concerns raised previously;

- Drawings we prepared were concepts only and not intended for any other purpose and should not be used to support any business case for Zsa Zsa properties and certainly not for use as marketing material to attract investment. They were also prepared on your instruction to test densities;
- On a number of occasions we have advised that Council were unlikely to accept density proposed in our concepts and those of Chris Smith & Associates and that the concepts were an exercise in assessing yield/density;
- On a number of occasions we have advised that much of the land is subject to flooding and that the relevant studies should be undertaken before proceeding with the development.¹⁷

4.17 The promoters of the schemes used the good name and reputation of this organisation beyond the services it was contracted to provide to enhance its own standing.

Market First's Foscari and Veneziane projects: Slater and Gordon Lawyers

4.18 Some investors in Market First's land banking schemes, the Foscari and Veneziane projects on the outskirts of Melbourne, were influenced by the reputed involvement of well-known law firm Slater and Gordon. The committee heard evidence that Market First's representatives, including Mr Rowan Burn, CEO of Market First, heavily promoted Slater and Gordon's involvement during their seminars.¹⁸ Statements made to potential investors suggested that Slater and Gordon were involved in the projects to represent and protect the interests of individual investors, including by lodging a 'master caveat' over the lots to ensure that the rights of the investors were maintained. While there appears to be no such thing as a 'master caveat', it is apparent, as explained further below, that some investors believed the instrument existed and provided an effective guarantee that their investment in a project would be secure if the project did not proceed.

16 SMEC Urban to Mr Nejat Mackali, 5 October 2011 attached with correspondence to the committee, 26 November 2015.

17 Correspondence, SMEC Urban to the committee, 26 November 2015.

18 Mr Jim Guy, *Committee Hansard*, 30 September 2015, p. 36; Mr Trevor Haynes, *Committee Hansard*, 30 September 2015, pp. 38-39; Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 41.

4.19 While some investors were clients of Slater and Gordon, others, however, were under the misapprehension that they were clients when clearly they were not. This misunderstanding became apparent when Slater and Gordon received file transfer forms for investors who were not their clients.¹⁹ Mr Guy, for example, thought he was represented by Slater and Gordon and provided the committee with a Slater and Gordon disclosure statement and costs agreement signed by his wife and himself.²⁰ This document, however, was not signed by Slater and Gordon and Slater and Gordon later confirmed that Mr Guy was not a client of the firm.²¹ Another investor, whose name is withheld, also provided the committee with a similar document from Slater and Gordon not signed by anyone from the firm.²² This investor also received documents from Summit Law and the file transfer form from Slater and Gordon to SK Lawyers.²³

4.20 Mr Adam Zuchowski, who was then employed as a Senior Associate in the Footscray office of Slater and Gordon, was the lawyer representing some investors in the Foscari and Veneziane projects.²⁴ He took on his first clients for Market First's projects in May 2013.²⁵ According to Slater and Gordon, Mr Zuchowski advised 197 clients on the Veneziane or Foscari projects, 41 of which were options clients and the remaining 156 had invested through off-the-plan contracts of sale.²⁶ Ms Sharon Taylor, General Manager of Professional Standards and Risk at Slater and Gordon, started reviewing her firm's involvement when the matter was referred to her group on 23 September 2013. Mr Zuchowski stopped working for Slater and Gordon on 2 December 2013.²⁷

4.21 Ms Taylor's group investigated both Mr Zuchowski's advice as well as Market First's developments and, as noted earlier, raised concerns about the projects. They included: uncertainty around who was behind the developers; representations made to investors, in particular, that they were purchasing at wholesale prices; payments for exclusive membership; and 'a disconnect between the lifestyle amenity promised to investors and the likelihood of delivery'.²⁸

19 Slater and Gordon Lawyers, answer to written question on notice, 2 December 2015, p. 3.

20 Mr & Mrs Jim and Alison Guy, *Submission 150*, p. [2].

21 Slater and Gordon, *Submission 147*, p. 2.

22 Name withheld, *Submission 149*, p. [12].

23 Name withheld, *Submission 149*, pp. [15-21].

24 Slater and Gordon Lawyers, *Submission 147*, p. 2.

25 Slater and Gordon Lawyers, *Answers to Question on Notice*, 2 December 2015, p. 1.

26 *Committee Hansard*, 30 September 2015, p. 48.

27 Ms Sharon Taylor, General Manager, Professional Standards and Risk, Slater and Gordon, *Committee Hansard*, 30 September 2015, p. 44.

28 *Committee Hansard*, 30 September 2015, pp. 43, 46 and 48.

4.22 As discussed in the next chapter, Slater and Gordon also became concerned that Mr Zuchowski may have had a potential conflict of interest in providing advice on matters relating to Market First schemes. This potential conflict of interest appears to have derived in part from the fact that Mr Zuchowski is the brother-in-law of Mr Darren Eliaou, the Principal Lawyer at Evans Ellis Lawyers, which has been at the centre of a number of land banking schemes.²⁹

4.23 Mr Guy, who invested in Market First's Foscari project, told the committee that his investment decision was influenced by Slater and Gordon's apparent association with the project. Mr Guy told the committee that Mr Burn spoke about this involvement at the seminar:

...Rowan Burn made a comment in his statement during our program that Slater and Gordon would hold the master caveat over the entire site, protecting investors in the event the project development failed, or a sale of the whole site was imminent. That was what was influencing them. It was a guarantee that our money would not be lost because the money would be held in the lawyer's trust funds. It would only be released on completion of our property.³⁰

4.24 In addition, according to Mr Guy, he spoke to a lawyer named 'Adam' from Slater and Gordon who discussed the master caveat Slater and Gordon would lodge over the block of land.

4.25 Mr Hayne and Ms Baxter, who also invested in Market First's projects, had similar recollections about references to the master caveat. Mr Hayne indicated that Mr Burn, in his investment seminar presentation, told the audience that Slater and Gordon was providing the master caveat 'so I could not lose my money'.³¹ Ms Baxter informed the committee that 'They were the two things that made me buy into the scheme—the existence of the master caveat and representation by a reputable law firm'.³²

4.26 Ms Taylor explained that Slater and Gordon was not involved in lodging a master caveat. She referred to this 'curious notion' of a master caveat that 'had apparently been suggested by representatives of Market First':

The first I heard of the 'master caveat' was after our 10 February 2014 letter had been sent out to clients. One client contacted me and discussed the issue of the master caveat. That was the first time that I had heard of the master caveat. It was a little perplexing, really, because Slater and Gordon clearly did not provide a master caveat. What I was able to glean was it appeared that it was something said in the promotional seminars by Rowan

29 Ms Sharon Taylor, General Manager, Professional Standards and Risk, Slater and Gordon, *Committee Hansard*, 30 September 2015, p. 46.

30 Mr Jim Guy, *Committee Hansard*, 30 September 2015, p. 36.

31 Mr Trevor Haynes, *Committee Hansard*, 30 September 2015, pp. 38–39.

32 Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 41.

Burn, as a way of assuring people about their investment. But it is not something that Slater and Gordon can or would provide. In fact, I am a little perplexed by what a master caveat would even be for a land development of that kind.³³

4.27 To summarise Ms Taylor's evidence, Slater and Gordon did not provide master caveats over the Market First projects and the provision of a master caveat would have, according to Ms Taylor, been 'implausible' as no such instrument exists.³⁴ Ms Taylor also provided the committee with a file note from a phone conversation with Ms Baxter on 13 February 2014; the file note records Ms Baxter asking about the master caveat which Mr Burn had mentioned at every seminar Ms Baxter attended.³⁵ It appears that Ms Baxter was the client who had contacted Ms Taylor and discussed with her the issue of the master caveat.

4.28 Mr Zuchowski, the Slater and Gordon lawyer who provided advice on the Market First schemes, submitted that he did not provide any advice or representations about lodging a master caveat, an instrument he also thought did not exist:

My advice did not include any representations, comments or discussion whatsoever in respect of a 'master caveat', the existence of a 'master caveat' or indeed that a 'master caveat' would be lodged and is directly contrary to the evidence given by Ms Baxter to the Committee.

...

I further advise:

1. I am unaware of and do not believe that such an instrument known as a 'master caveat' in fact exists as a matter of property law;
2. Accordingly I did not and would not provide any advice in respect of a 'master caveat' and again, as such an instrument does not exist I could not provide any advice in respect of it...³⁶

4.29 Further, Mr Zuchowski maintained that Slater and Gordon's clients were provided with documents (for an off-the-plan contract of sale) which expressly stated that the purchaser was not permitted to lodge a caveat to protect their interest.³⁷

4.30 In summary, all three investors in Market First projects who gave evidence to the committee had a strong recollection of Mr Burn making representations about

33 Slater and Gordon Lawyers, *Submission 147*, p. 1 and Ms Sharon Taylor, General Manager, Professional Standards and Risk, Slater and Gordon, *Committee Hansard*, 30 September 2015, p. 48.

34 Ms Liesl Baxter, *Committee Hansard*, 30 September 2015, p. 41.

35 Slater and Gordon Lawyers, *Submission 147*, Attachment 2, p. [1].

36 Mr Adam Zuchowski, *Submission 145*, p. [4].

37 Mr Adam Zuchowski, *Submission 145*, pp. [4–5]. It should be noted that only an excerpt of the off-the-plan contract of sale was provided and it is not possible for the committee to confirm the authenticity of this document.

Slater and Gordon providing a master caveat over the Foscari and Veneziane projects during his presentations at investment seminars. These recollections seem consistent with Market First's practice to encourage attendees at its seminars to view its land banking schemes as a legitimate, rewarding property investment opportunity. The committee considers that it is unlikely that three investors, who do not have legal backgrounds, would concoct consistent and detailed stories about a non-existent type of caveat. It is more likely that Market First did make representations about Slater and Gordon lodging a master caveat to protect the interests of investors. It is clear that the representations about the master caveat, and Slater and Gordon's purported role in lodging the master caveat, played a substantial role in giving a sense of legitimacy to Market First's projects and convincing investors that their interests in the developments would be protected.

4.31 On the evidence, Mr Zuchowski's role in facilitating and encouraging clients to think that a master caveat would be lodged to protect their interests is unclear. Mr Zuchowski did not mention or provide any evidence about the documents provided in relation to options agreements; he asserted that the vast majority of matters on which he provided advice related to off-the-plan contracts of sale.³⁸ According to the documents Mr Zuchowski provided to the committee, investors in off-the-plan contracts of sale could not lodge any type of caveat to protect their interests.³⁹

4.32 The committee believes that Market First repeatedly promoted the involvement of Slater and Gordon and referred investors to Mr Zuchowski because the law firm's reputation provided the developments with an aura of legitimacy. Investors felt their interests would be protected because of the involvement of Slater and Gordon. Following this matter, Slater and Gordon has instituted an absolute prohibition on accepting work from wealth creation seminars, as the firm considers 'that wealth creation seminars represent an undesirable segment of the real estate promotion market'.⁴⁰

4.33 The committee considers that firms need to be cautious about providing advice on schemes that are promoted by spruikers, which includes ensuring that internal risk management processes are robust enough to identify promptly employees who may be engaged with developers or promoters of schemes that the firm would not endorse.

Market First's Foscari and Veneziane projects: Peddle Thorp architects

4.34 In their marketing brochures and during presentations at investment seminars, Market First promised that the Foscari and Veneziane luxury housing estates to be constructed outside of Melbourne were designed by Peddle Thorp architects. Market First's marketing brochure stated:

38 Mr Adam Zuchowski, *Submission 145*, p. [3].

39 Mr Adam Zuchowski, *Submission 145*, attachment 1, p. [1].

40 Slater and Gordon Lawyers, answer to Question on Notice, 2 December 2015, p. 2.

You can invest in a project designed by World Class Architects Elevli Plus Peddle Thorp

Peddle Thorp have designed many world famous projects including The Grand Hyatt in Collins Street Melbourne, Doha Aquarium in Dubai, The Rod Laver Arena, ANZ Headquarters in Melbourne and the recent global rebranding of Tiffany & Co.⁴¹

4.35 The brochure also described Peddle Thorp as a 'project partner' for Market First's developments.⁴² Mr Burn spent several minutes showing the attendees at one investment seminar photographs of Peddle Thorp's projects, emphasising that Market First's housing developments would be similarly luxurious and well-designed.⁴³ Peddle Thorp's involvement appears to have added significant attractiveness to Market First's developments, providing evidence to justify the promises of high returns for a 'branded' development built on farmland outside Melbourne.

4.36 Peddle Thorp Architects (PTA) informed the committee of its involvement with Market First's projects. It noted that, around August to November 2011, Michael Grochowski, Project Management (Aust) Pty Ltd engaged both PTA and its interior design company PTID for masterplanning and graphic design services for the Acacia Banks, Truganina and Reeds Edge near Melton. According to PTA, they had no knowledge of Market First's involvement in the project or of the project timeline—it did not know that these projects were Market First developments or that any sales or options were offered for sale. PTA noted that they were engaged 'to prepare a concept masterplan for Mr Grochowski (Project Management (Aust) Pty Ltd) for which PTA and PTID have not been fully paid'.⁴⁴ PTA explained:

...our Contract was with Michael Grochowski, Project Management (Aust) Pty Ltd, who was introduced to us by Hakan Elevli of Elevli Plus. The relationship ended as our invoices remained unpaid.⁴⁵

4.37 As noted in chapter 2, ASIC has serious concerns that Foscari is not close to completion and appears unable to be completed due to the financial position of the development company which operated the scheme and is the owner of the land.⁴⁶ It was also prompted to take legal proceedings against Foscari because it formed the view that investors may have invested in the scheme on the basis of misleading representations by the promoters of the project.

41 Mr & Mrs Jim and Alison Guy, *Submission 150*, [p. 53]. Architect Mr Hakan Elevli, Principal of Elevli Plus, has publicly stated that he has sold his copyright on the Foscari drawings, and he has no ongoing involvement in the project. Royce Miller, Simon Johanson and Ben Schnieders, 'Kaye continues to conjure', *Sydney Morning Herald*, 8 March 2015.

42 Mr & Mrs Jim and Alison Guy, *Submission 150*, p. [57].

43 Mr & Mrs Jim and Alison Guy, *Submission 150*, around 58 minutes into DVD no. 2.

44 Peddle Thorp Architects, answer to written question on notice.

45 Peddle Thorp Architects, answer to written question on notice.

46 ASIC, 'Heritage Bendigo and Foscari', frequently asked questions.

Office of Living Victoria—government grant to Foscari

4.38 The Foscari development promoted by Market First in Melbourne's outer west received a \$651,679 stormwater grant from the Victorian Government's former water agency, the Office of Living Victoria. An investor update on Market First's website cited this grant as evidence of the project's development.⁴⁷ The grant was also mentioned in Market First's marketing brochure:

Quality of content, outcomes and presentation

One of the major outcomes from the design [of Foscari] has been awarding of an Office of Living Victoria fund commitment for the projects ability to showcase how sustainability is a catalyst for connecting community, water and the environment.⁴⁸

4.39 A recent independent review of the grants program by former Victorian and Western Australian Auditor-General, Mr Des Pearson AO, found that 80 per cent of the grant had been released to the holding company behind Foscari, Foscari Holdings Pty Ltd. It also had concerns about the viability of the scheme, stating that the purpose of the grant was:

...to implement storm water management infrastructure in a green field development yet no infrastructure has been delivered. Milestone payments were triggered on signing of the Funding Agreement (25%), completion of detailed design work (45%) and awarding of contracts to builders (10%). No further milestones have been met and it is not clear whether the project will be completed.⁴⁹

4.40 Following the release of the independent review of the grants program, it was reported that the Victorian government would attempt to recover the grant money from Foscari Holdings.⁵⁰ Victorian Water Minister, the Hon Lisa Neville MLA, said the government would seek to recover the money as there were 'no tangible outcomes at all' with the Foscari project.⁵¹

Conclusion

4.41 The ability of the operators and promoters of land banking schemes to convince some well-known members of the property development sector and

47 Market First, *Unique benefits*, <http://www.marketfirstgroup.com.au/latest-news-1/foscari-development-council-approved> (accessed 18 September 2015).

48 Name withheld, *Submission 149*, p. [27].

49 Pearson, Des, *Office of Living Victoria: Independent Review*, September 2015, p. 27, http://delwp.vic.gov.au/_data/assets/pdf_file/0010/311779/OLV-Des-Pearson-Review-REPORT-FINAL-SEPTEMBER-2015.pdf (accessed 18 September 2015).

50 Royce Millar and Ben Schneiders, 'Dan Andrews wants water money back from Henry Kaye-linked project', the *Age*, 3 September 2015.

51 Royce Millar and Ben Schneiders, 'Dan Andrews wants water money back from Henry Kaye-linked project', the *Age*, 3 September 2015.

government agencies that the land would be developed as promised highlights the importance of all relevant authorities carrying out proper probity checks.

4.42 It appears that many of the companies that were promoted as having a significant involvement in bringing the developments to life were only involved at the early stages of the projects, and later withdrew their services. The involvement of these third parties provided a sense of legitimacy to the projects and encouraged investors to believe that the schemes were well supported by others in the property sector. However, potential investors were not aware of the exact nature of the companies' engagement or that they were no longer involved with the schemes.

4.43 In other cases, as with the Greater Shepparton City Council and Slater and Gordon (excluding the endeavours of Mr Muto and Mr Zuchowski, respectively), it appears that the brand name of the third party was used during investment seminars often without the explicit knowledge or consent of these organisations.

4.44 More broadly, these case studies raise questions about how consumers—who are often unaware of standard practices in the property development industry—can tell the difference between reputable developments and high-risk developments when some of those inside the industry (and in government) seem to have some difficulty in discerning the difference. They also highlight the reputational damage legitimate businesses can suffer by being associated with less reputable schemes, regardless of whether or not they have been directly involved in operating or providing advice on land banking schemes. Finally, the case studies demonstrate the capacity of the promoters of such schemes to overstate the involvement of respectable companies for blatant promotional purposes. They are likely to seize any opportunity to associate their venture with recognised, reputable entities in the expectation that it will lend credibility to their project.

