A SUBMISSION TO
THE STANDING COMMITTEE ON FINANCE & PUBLIC ADMINISTRATION.

INQUIRY INTO VICTORIAN GOVERNMENT
DECISIONMAKING,
CONSULTATION, &
APPROVAL PROCESSES

ABSTRACT. The information “leaked” to the A.B.C. on 25, 26 February last about
the Windsor Hotel development mimics my current observations of planning malfeasance
by the Mornington Peninsula Shire Council and associated agencies. As does the
intimidatory posturing of senior people to prevent any examination of those issues. I
submit that there is prima facie evidence of a universal spread of such planning practices
from the Victorian Government across most, if not all planning agencies. This should
be of great concern to any committee charged with over-sighting the probity of
government administration.

I submit that the root cause of the planning malfeasance I have observed stems from a
lack of probity in the Premier’s Department, Attorney General’s Department, and the
Ministries of Planning and Local Government. All have ignored for example,
complaints about the use of clearly falsified public records at local government level on
the grounds that such matters are not their responsibility. This delinquency has flowed
down to the second level of probity maintenance; the Ombudsman and the Victoria
Police. This raises the following question; has the Victorian Government, either by
commission or omission, indicated that economic growth is more important than planning
probity? Thus green lighting planning malfeasance.

This submission provides instances of malfeasance that warrant investigation. The
misdirection of appeals by altering appeal grounds. The ignoring of invited and
prescribed public submissions to the point of not even reading them. The ignoring of
prescribed planning procedures and prerequisites. The substitution of entirely false
evidence and documentation. The misrepresentation of documents. The use of
mendacious chicanery to deceive and mislead residents. If objectors challenge any of
the above, the Council’s first response is to threaten defamation action.

I submit that the Committee should take note of and consider such blatant examples of
improper VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION,
and APPROVAL PROCESSES. Examples, that if ignored, green light an exponential
growth in planning abuses. Have the not-to-be-disclosed Madden office practices
percolated to the extremities of local government?

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I noted Minister Madden’s appearance on the 26 February “STATELINE” program where he claimed the “leaked” documents about the manipulation of public consultation was anathema to both himself and the Government. The offending documents were passed off as imaginative ramblings of unthinking staff. The staff have been punished.

On the other hand, do the documents accurately specify long standing, deceptive Government policies? Deceptive policies of such long standing that familiarity has seduced staff in the planning ivory tower to regard them as indisputable, legally applicable “reality”. In fact, an established society wide “reality” as indicated by the public’s apparent acquiescent compliance; whereas in truth, all opposition is suppressed by being thoroughly disparaged and ignored. Thus, in the minds of those ivory tower staff, there is no longer an imperative for any secrecy or caution. That is, the exposed documents represent the normal quality of thinking and internal documentation within the present Victorian Government.

This critical deduction stems from my observation of incomprehensible to duplicitous planning decisions by the Mornington Peninsula Shire Council over the last 5 years in particular. I have been involved in the protection of the integrity of the heritage recognised Ranelagh Estate for the last 40 years.

Earlier, if a developer or the Council attempted to achieve a development by deception and the like, a letter to Council pointing out that the public was aware of the ploy and would object, would usually return probity to the planning process. Now, when abuses of the law and the planning process are pointed out to Council, the response is that Council is operating to such exemplary standards that any criticism amounts to a defamatory attack on the Council officers involved. Further, that resident objections are irrelevant as residents don’t understand the technical minutiae of the planning process. The ultimate defensive position being that Council has the Victorian Government’s approval for their modus operandi.

AN ILLUSTRATION OF THOSE SUPPOSED EXEMPLARY STANDARDS, OBJECTOR IRELEVANCE, AND VICTORIAN GOVERNMENT SUPPORT.
I enclose a 30 March 2005 Council letter initiated and approved by the C.E.O.:
• Note the pompous indignation from supposed probity exemplars. Ms Robson was not mentioned in my letter other than to identify the letter.

• Note the lack of any corrections or information to challenge my observations.

• Note lines 15 to 17 stating that questioning Council was a totally unacceptable and inappropriate action for a member of the community – the employers of those Council officers who supposedly serve the community.

• Note lines 13 and 14 challenging me to take complaints to the Victorian Government. This is prima facie evidence that Council had already been given the green light to use any form of malfeasance in at least planning matters to, for example, boost economic...
growth. That prima facie evidence is strengthened by the “it is not our responsibility” responses to written complaints by the Victoria Police, the Ombudsman, the Premier’s Department, the Attorney General, the Ministers for Planning and Local Government, and the Victorian Government Solicitor.

- Note the repeated use of “defamatory” to intimidate objectors into silence for fear of being involved in a Supreme Court defamation action. It amounts to crude blackmail – making an unwarranted demand with menaces.

- Note the chicanery of senior Council officers in making defamation threats when they must have known from previous attempts to silence objectors that the truth, especially in relation to government administration, can never be defamatory. This point was compounded by Council issuing a further 12 baseless defamation threats over the next 4 years while not pointing out any factual error on my part.

ILLUSTRATIONS OF PLANNING MALFEASANCE.
I will refer to only one of several planning cases to make my point; the proposed Butler Reserve car parking development on heritage registered parkland.

- In essence, the development has no basis at all in objective, professional town planning research. In fact peripheral parking research contradicts Council’s plan.

- The plan is contrary to all Council’s propaganda about sustainability and responsible stewardship of community assets – key points in the C.E.O.’s. mantra of integrity.

- The development is a conspiracy by developer, commercial, and Council interests to expand an already over large local shopping area in the belief that it will become more profitable resulting in rising business and land values, particularly by rezoning quasi commercial land to commercial land. It is a serious issue in that the land could be worth $20-30 million as commercial land.

- The development is contrary to the thoroughly researched wishes of the residents as detailed below in “....COMMUNITY CONSULTATION....”

As the project has become increasingly convoluted over 5 years of manipulation by Council, the only way to illustrate the malfeasance by Council is to select particular points on each aspect of behaviour as there is no easy to follow planning sequence. The planning confusion is to confuse and frustrate objectors.

HARD CORE MALFEASANCE.
1. To confuse residents about the status of heritage registered land, the Shire C.E.O. and others have continually maintained the absolute fallacy that the Reserve was previously developed in the early 1970s with basketball courts, a pavilion, and first class hockey field, all of which have been demolished without trace. If true, this could provide a clear precedent for redeveloping the heritage registered parkland. It is a serious criminal offence to knowingly make, use, and hold false documents under S.87A of the Victorian Crimes Act. So serious that it has a maximum 10 year jail sentence as a
deterrent. The offence is compounded by the offenders being public servants using false documents to deceive and defraud residents of irreplacable public parkland.

2. Again to confuse residents about the status of heritage registered land, the Shire C.E.O. and others have continually maintained that an unauthenticated plan of the Ranelagh Estate is the original concept plan by Walter Burley Griffin. That plan could well be creative art work for deceptive advertising to boost stagnant 1920s sales. This plan has a football field incongruously squeezed into the Reserve’s south end, supposedly proving Griffin himself didn’t see it as a garden reserve as now claimed by heritage registration. The plan was also key Council evidence to mislead V.C.A.T. into granting permission for commercial enterprises in a residential zone. This attempted deceptive alienation of public land to benefit private interests is serious, million dollar fraud.

3. As mentioned above, the Reserve is generally heritage registered with 2 small exceptions. Residents applied to have them heritage registered under S.27 of the Heritage Act. The application went to appeal. The Tribunal totally ignored S.27 and decided the appeal on grounds it selected. It also relied on spurious claims that a previous residential zoning of that land (extinguished 50 years ago) made that land forever residential. This is a gross abuse of process and indicates collusion to pervert the course of justice by Council, Heritage Victoria, and/or the Heritage Council. Had the decision been due to error it would have been declared null and void on objection. I have attached a case study of this appeal and its consequences to illustrate the breadth and depth of planning malfeasance.

4. Note the use of blackmail (cited earlier) to stop residents exposing such practices.

"SPIN DOCTOR" MALFEASANCE, (a few selected examples).

A. The only written justification for parking that I am aware of was given to a fellow objector by Strategic Planning Manager Shedden in August 2006. "The strategic question ...about whether a car park is appropriate within the John Butler reserve is a matter that is more appropriately considered in...the preparation of a Structure Plan for the Eliza Town Centre. This strategic planning exercise is on the Shire's future work program, but is not prioritised to begin this financial year." This is unforgivable mendacious chicanery by a determined charlatan. The plan had been improperly passed by Council on the basis of pretty pictures and spurious chatter rather than on an assessment of properly researched parking requirements. It is outrageous to confuse or intimidate residents into believing that it is proper to build first and plan later.

B. To confuse and intimidate residents into withdrawing objections, manager Shedden stated in August 2006 that "The assigning of a name...to land...as "John Butler Reserve" was only by resolution of the Council of the day and does not create a "reservation" status over the land." He was corruptly inferring that the 50 year old Reserve was no longer a reserve if Council officers so wished. Would he dare write to developer Lendlease stating that; "The assigning of a building permit to land you owned for 50 years was only by resolution of the Council of the day and does not create
a “building permit” status over the land.”? Again, his misrepresentation and deception is an outrageous abuse of his employers, the people he is employed to serve.

C. Extending the malfeasance of Manager Shedden is Director Atkins, supposedly the director of sustainable environment. The following quotation about the Butler Reserve is from a 30 December 09 letter and illustrates the relentless unending torrent of deception by Council “While the land is functionally part of the reserve area it is not part of the original subdivision based on the Griffin design
- The “...it is not part of the original subdivision...” is absolutely wrong and found to be absolutely wrong by Heritage Victoria and the Heritage Council. Council was told to correct this 5 months earlier.
- The point of “...the original subdivision based on the Griffin design...” is to maintain the use of the unauthentic plan discussed in 2 above. That is, the registered subdivision that the public is working to is not the authentic Griffin design.

This endless repetition of false and misleading information appears to be based on nothing more than Council’s belief that if they think it long enough and say it often enough it will become fact in the public’s mind. Those initiating such degradation of probity justify it by claiming it is “noble corruption” in the course of carrying out one’s duty. The Victoria Police see such behaviour as unbridled criminal corruption that always spirals exponentially, thus requiring the disbanding of entire squads.

On the other hand in planning, it appears to be an encouraged form of behaviour due to the its-not-my-responsibility approach of the Victoria Police, the Ombudsman, the Premier’s Department, the Attorney General, the Ministers for Planning and Local Government, as mentioned earlier.

**ILLUSTRATING THE TOTAL HOAX OF COMMUNITY CONSULTATION, or, IF THE COMMUNITY DOESN’T AGREE WITH PREDETERMINED COUNCIL OBJECTIVES, THE COMMUNITY’S INPUT IS IRRELEVANT.**

In a pious “VISION & MISSION” credo, a duplicitous C.E.O. states that Council:-(a) epitomises “trust, respect and integrity”;
(b) will “engage with and represent the community”,
(c) “encourages active citizenship and inclusive local democracy”,
(d) “governs in a responsive, open and accountable manner”,
(e) conducts “open and effective community consultation”,
(f) provides “responsible stewardship in managing community assets”, and,
(g) “has integrated principles of sustainability into all of its decision making processes”.

The points already discussed illustrate the duplicity of (a), (b), (c) and (d). This section deals with community consultation, stewardship of community assets, and sustainability.

Over the last few years, the Council has maliciously wasted hundreds of thousands of ratepayer’s dollars engaging 3 consultants to hopefully manipulate community opinion to
fit Council objectives. The consultants were to investigate community attitudes on the heritage of the Ranelagh Estate in particular and Mt. Eliza generally. Instead of Council finding a pliable community apathy, well over 100 residents participated in various meetings to grasp the opportunity to forcefully instruct Council on heritage protection of the area. In particular, a heritage code to maintain the integrity of the nationally recognised Walter Burley Griffin designed Ranelagh Estate. Of the three, Context P/L conducted the most thorough research involving meetings totalling 5 hours with more than 100 concerned residents, or 500 man-hours. Context wrote a comprehensive report that supported the residents’ clear unanimity on heritage objectives. There was no demand for a dissenting or minority report.

Along with the publishing of a long delayed report, apparently due to Council editing, Council declared that heritage considerations were totally subservient to all other development issues. That is, heritage values were totally irrelevant if developers or Council wanted to exploit an area. Thus exposing the duplicity of (e) and (f) and the maliciousness of engaging the three consultants when an anti-heritage position had already been adopted by Council.

Continuing with heritage protection, the residents initiated a heritage registration proposal in 1996 to protect the public open spaces of the Estate – the various garden reserves and the road reserves. The process was obstructed until 2005 when those reserves were heritage registered in accordance with the residents 1996 Application. Immediately the registration was proclaimed, Council secretly colluded with Heritage Victoria to have a key area of 50 year old properly zoned parkland deleted from the registration on the irrelevant and unsustainable ground that it was once zoned as residential. That land protected and enhanced the Butler Reserve’s Lot G. The reasons why the area was declared parkland in the 1950s, and its subsequent 50 year cultural history, were all irrelevant to a pro-development Council and a compliant Heritage Victoria. Again exposing the duplicity of (e) and (f).

The community tried to overturn this untenable manipulation as set out in 3. HARD CORE MALFEASANCE above.

To exacerbate this collusion and the bypassing of community consultation, Sustainability Director Atkins wrote the following in December 2009. “The proposed car parking treatments...were raised in discussions with Heritage Victoria and no objections were raised by them on heritage grounds.” This infers agreement prior to a permit application and intimidates residents into believing that objecting to a permit is irrelevant. It also infers collusion and that Heritage Victoria has violated the Heritage Act by ignoring the requirement of permits to alter the status of major areas of heritage registered parkland. Further, heritage is a community asset, not a council officer asset to distribute to developer mates.

Then to show his contempt for sustainable human environments he goes on to state, “The development of a Master Plan for the Butler Reserve (a heritage registered
garden/road reserve) sought to show how a (car and) skate park can be successfully integrated with enhanced open space.”

In essence he is claiming that firstly, in human sustainability terms the Botanic Gardens could be improved by the inclusion of his car park, and secondly, that public parkland is an underdeveloped resource available for commercial development rather than a critical asset for the psychological and physical health of a society that is showing signs of development stress.

To cap off this unbounded duplicity within Council’s sustainability claim (g), Council recently reduced developers’ parking requirements from 8 down to 3 to 5 spaces /100m² of retail floor space. This was to increase unnecessary commercial development in an area with very obvious vacancies. Simultaneously Council was claiming that parking had to be increased on heritage registered reserves while there was virtually no curb side parking in wide streets adjoining the commercial area due to parking restrictions. A dichotomy Council refuses to recognise.

To encapsulate the above examples from this one planning case, the Butler Reserve, the only logical explanation for the falsifications, chicanery, and perfidy is that the planning process has been seriously perverted. There is not an atom of objective, professional town planning in this particular project.

That perversion of VICTORIAN GOVERN,MENT DECISION MAKING, CONSULTATION, AND APPROVAL PROCESSES is supported by the merry-go-round response of “it’s not our responsibility” from the Victoria Police, to the Ombudsman, to the Premier’s Department, to the Attorney General, to the Ministers for Planning and Local Government, back to the Police, and so on.

This perversion of government probity and conventional ethical standards goes well beyond the planning area. It penetrates and undermines the public’s general perception of politico/public administration that underpins the maintenance of a civil society. To reinforce this point I enclose comments on the state of Australian government by Tony Fitzgerald, surely a reliable referee.

To conclude, I must again emphasise that the above material is only the tip of the malfeasance iceberg of only one planning proposal. There are several other such situations within 200m of the Butler Reserve, let alone Shire wide. The Committee will probably not hear of other planning problems because of the community’s fear of Council retribution ranging from ridicule to instigating vexatious and malicious legal action. This community silence allows whistle blowers to be dismissed as eccentrics out of touch with the community’s apparent acceptance of the situation.

I wish to crown this malfeasance iceberg with the following two gems of administrative perversion. Firstly, I complained to the Ombudsman about Council’s use of entirely falsified claims. He asked for evidence to support my accusation. I in turn asked the Ombudsman what evidence he would expect anyone to have about events that never happened? No response. I then pointed out that in a democracy with supposed responsible government, wasn’t it government’s responsibility to provide evidence of any government claim? No response. He simply repeated that if I had no evidence (of
something that never happened) he could not act. The Ombudsman, in a breach of the Ombudsman Act, inferred he could not initiate an investigation. For those generating “icebergs” of malfeasance, this can only be seen as an unequivocal message that the fabrication of entirely false planning documents was a Victorian Government approved procedure that will not be challenged by appeal or legal agencies.

Secondly, Minister Madden is now the Minister for the Respect Agenda. Doesn’t this consistent litany of false records, mendacious chicanery, and perfidy constitute a local government initiated Contempt Agenda? Contempt for the people government is supposed to serve. Contempt for government probity across the whole spectrum of law and ethics. Letters re the Respect Agenda to the Premier and the Ministers for the Respect Agenda and Local Government remain unanswered.

All my evidence of malfeasance is in writing. I am fully prepared to open my files for the Committee and/or appear before the Committee.

Geoffrey Gordon 16-April 2010 98 Wimbledon Ave., Mt.Eliza, 3930
THE STANDING COMMITTEE ON FINANCE & PUBLIC ADMINISTRATION.

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION, & APPROVAL PROCESSES

ATTACHMENTS
TO SUBMISSION BY G, GORDON, 16 APRIL 2010.

COUNCIL LETTER, 30 MARCH 2005, N. BUCK.

TONY FITZGERALD OBSERVATIONS ON GOVERNMENTS. 11 MARCH 2010.

30 March 2005

Mr Geoffrey Gordon
98 Wimbledon Avenue
MOUNT ELIZA 3930

Dear Mr Gordon

BUTLER RESERVE MOUNT ELIZA

I refer to your open letter addressed to the Mayor and Councillors of the Mornington Peninsula Shire received at this office on 4 March 2005. In your letter, you discuss a response by Ms Lee Robson, Team Leader – Recreation Planning and Development dated 23 February 2005.

5 In my role as Manager Governance and Corporate Support with the Shire, I also fulfil the role of internal ombudsman and a secretariat role to Council. It is in that role that I write to you.

In reading your letter I am concerned with the aggressive nature of your allegations and the defamatory comments in regard to Ms Robson. In a number instances you make the comment that “it is an absolute lie”, “it is fraudulent in the extreme”, and “this is deception and obfuscation”. Your letter also questions the honesty and integrity of Ms Robson and suggests that her actions and response lead to corrupt behaviour. There are avenues through State Government departments for you to pursue if you believe corruption exists.

15 It is not my role to respond to the questions you have raised in your letter, however your letter “crosses the boundary” of what is acceptable and appropriate comment for a member of the community to make on an issue. I request that you refrain from making or passing on derogatory and defamatory comments to third parties relating to Ms Robson, or for that matter, any of the Shire’s staff.

20 In future, please confine your comments to the subjects or issues of concern instead of making personal, defamatory attacks on individual Shire officers.

Yours faithfully

Noel Buck
Manager Governance & Corporate Support

(Reference: 0670/185/070 & 0640/025/010 DocID 897026: Direct Dial 5950 1435)

cc Councillor Communicator, CEO
PM with Mark Colvin
Monday to Friday from 6:10pm on ABC Local Radio and 5:10pm on Radio National.

Fitzgerald swan song: Australian democracy is bent

Simon Lauder reported this story on Thursday, March 11, 2010 17:14:00

MARK COLVIN: The former anti-corruption royal commissioner and judge, Tony Fitzgerald, has made what he says will be his last commentary on the state of government in Australia.

And it was damning.

Mr Fitzgerald says the prevailing political culture is amoral, anarchic, controlled by money and lacking in ethics, oversight and accountability.

He says too many politicians are motivated by power rather than public interest and there's too much government by executive.

In short, Mr Fitzgerald says, our democracy is not broken but bent.

He delivered his assessment while launching an initiative of the Accountability Round Table, designed to reward politicians for honour and integrity.

Simon Lauder reports.

SIMON LAUDER: After blowing the lid off Queensland's corruption in the late '80s, Tony Fitzgerald went to ground, only breaking his silence last year, to accuse the state government of slipping back into the old ways.

Today he opened fire on Australian politics more generally.

TONY FITZGERALD: I've periodically rediscovered how easy it is to attract unwanted controversy.

(Quiet laughter)

TONY FITZGERALD: I hope to avoid that today in this, my swan song, by noting that my comments are not directed to individual politicians, a specific political party or a particular state and my opinions are simply those of an extremely fallible aging private citizen, with children and grandchildren who's interested in Australia's future.

SIMON LAUDER: With that the former royal commissioner launched into a speech, lamenting the dominance of Australian politics by career politicians and self interested groups with a disregard for the public interest in favour of political advantage.

He says voters are little more than observers to a substantially rule free political contest.

http://www.abc.net.au/pm/content/2010/s2843350.htm
TONY FITZGERALD: The community is ill served by this escalating transfer of power from the public to the dominant political parties and the party's disinterest in ethical constraints and resistance to oversight and accountability even by independent anti-corruption bodies.

Without satisfactory legal and ethical fetters, the political process like all human constructs can be and is manipulated and exploited to advance personal and group interests.

A political class has evolved which is interested in little but the acquisition and exercise of power.

SIMON LAUDER: Mr Fitzgerald says the major parties are abusing a position which is entrenched partly by wealth.

TONY FITZGERALD: It is now extremely difficult, if not impossible, for another competitive political force to emerge because of the financial advantages held by the two major parties and the critical role that money plays in political activity.

SIMON LAUDER: He says democracy is being undermined because of a disregard for Westminster conventions, an obsession with media management and the ability of well connected individuals and groups to wield influence.

TONY FITZGERALD: Decisions favouring special interests are common. Secrecy and misinformation, euphemistically called "spin" are routinely employed. Media management as it's called insults and confuses the electorate, which is denied the comprehensive accurate information which is essential to the proper functioning of democracy.

Most if not all conventions concerning standards of political conduct, which the Westminster system once incorporated, such as ministerial responsibility are now obsolescent.

SIMON LAUDER: Mr Fitzgerald says too often he's seen social division, populism and prejudice used a political tools and support for fundamental institutions abandoned for political advantage.

TONY FITZGERALD: The prevailing political culture is increasingly amoral with each party lowering its standards, exploiting gaps in the law and disregarding ethical standards in order to compete. You've heard the phrase "winner takes all" and you've heard the political phrase "whatever it takes".

SIMON LAUDER: Tony Fitzgerald's groundbreaking report on police and political corruption in Queensland ensures any comments he makes about political power will be heard - he insists this will be his last blast.

SIMON LAUDER: Tony Fitzgerald why did you call that your swan song?

TONY FITZGERALD: Well my understanding is that shortly before they die, swans sing and although I'm, not as far as I know, in imminent danger of death, this is indeed the last time I propose to speak publicly. I am a very private person. I've said what I want to say. I want to encourage the Accountability Round Table and organisations like that but I really have nothing more to contribute.

SIMON LAUDER: Can we assume that your comments apply to all levels of government?

TONY FITZGERALD: Look I don't really know what happens so much at local authority levels and so forth, I think that's a much more disparate group. I suppose my concerns are really more with Commonwealth and state governments than with local authorities; although obviously the integrity of local authorities is of paramount concern to local residents.

SIMON LAUDER: Is democracy broken?

TONY FITZGERALD: No. No it's bent.

SIMON LAUDER: The Accountability Round Table is now taking nominations for the inaugural awards to honour parliamentary integrity. It's not clear whether Mr Fitzgerald will be eligible to nominate.
TO THE STANDING COMMITTEE ON FINANCE & PUBLIC ADMINISTRATION.

Re INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION, & APPROVAL PROCESSES.

A CASE STUDY INDICATING ENDEMIC PLANNING MALFEASANCE FROM A TRIBUNAL ANSWERABLE TO MINISTER MADDEN, TO JUNIOR STAFF.

(TO SUPPORT THE 16/4/10 SUBMISSION BY GEOFFREY GORDON)

This is a starkly simple, encapsulated example of extremely serious government malfeasance. The example indicates government problems in all planning processes of decision making, consultation, and approval. The example is a serious matter involving heritage registered public land that could be worth $20-30 million if converted to commercial land.

This example highlights an abuse of process leading to a miscarriage of justice. The Heritage Council Tribunal suppressed the appellants' grounds for an appeal, then substituted grounds to suit a predetermined finding; then suppressed all appellant evidence supporting the appeal; and then accepted false evidence to support their decision. This involved a wide spectrum of public servants across several agencies. Logic dictates that it couldn't happen, or be maintained, without a general consensus across all levels of government that such behaviour was acceptable.

The case centres on a very simple application and appeal to Heritage Victoria to have two small areas incorporated into a heritage registration of garden and road reserves of the Ranelagh Estate, Mt.Eliza. One area had been previously properly registered, but then secretly deregistered. The other should be registered by way of a formal agreement of substitution for alienated registerable land. The 18 August 2009 Decision of the Heritage Council is attached.

GOVERNMENT ALTERATION & SUPPRESSION OF APPEAL GROUNDS.

1. In par. 20, the Committee states that it "...is required to assess whether the blocks ...are of sufficient cultural heritage significance...to warrant ...registration." This is wrong, see 2.

2. In par.21, the Committee recognises that the paramount grounds for the appeal are based on S.27 of the Heritage Act. In essence, any land (regardless of cultural heritage significance) could be added to the register to protect registered land. S.42(3) supports such additions. Ancillary appeal claims about the land's social, historic, and cultural significance were very peripheral to S.27.

3. Immediately after detailing S.27, "The committee considers that the land...does not meet the requirements of s.27...for the reasons set out in the Executive Director's submission." Wrong again, see 4. S.27 is not mentioned again by the Committee. The Committee has refused to consider any development threat re S.27 to the registered land.

[Signature]
4. Turning to the Executive Director’s submission in par. 9 to 12. There is no mention of S.27, and no discussion of any evidence supporting or refuting a S.27 appeal. In par. 9, the Executive Director’s decision is based solely on the State level criteria of the cultural heritage significance of the land.

5. Turning to the summary of the appeal grounds in par. 6 & 7, it is wrongly stated that registration was sought because the land had “...social and historic significance to the State of Victoria.”. The registration was sought to protect registered land under S.27 from impending development. Note that this ground has been deleted. There was, and there still are, Council approved plans to build on heritage registered land using the unregistered land as a stalking horse for the creation of precedents to incrementally alienate registered land. Of the 7 bulleted points, 2 is dismissed as irrelevant in par 22, and the other 6 are suppressed.

6. Subsequent to that 12 February decision, the Executive Director was heavily criticised for not only ignoring the terms of the appeal, but for persisting with inclusions of false records as recognised by the Committee in par. 28. No corrections have been issued to date.

This is an absolute abuse of process. It undermines the whole judicial system and attacks the core of a civil society. Compounding this abuse is Heritage Victoria’s and the Shire’s determination to uphold this decision in the face of severe criticism. Heritage Victoria has refused a second application. This is endemic malfeasance. To summarise:-

- note par.4 where very serious government errors are excused – a permit to falsify,
- the terms of an action have been changed so the government must win,
- government falsifications were incorporated to intimidate and/or confound citizens,
- the citizens’ evidence was suppressed absolutely and,
- as will be shown next, spurious legalisms are used to confound citizens.

GOVERNMENT USE OF MENDACIOUS CHICANERY AGAINST CITIZENS.

To confuse the issue for the infusion of chicanery, the Committee stated in par. 22 that “The...registration in 2005...was the road systems and reserves as set out in the 1924 design by Burley Griffin.”. This is a serious rewriting of evidence to facilitate a predetermined result. The detail of the 1924 design has been changed, especially the road detailing.

The residents’ 1996 application that triggered the 2005 registration states “ALL PARK RESERVES AND EXISTING ROAD RESERVES ON THE ESTATE.”, the implication being “existing” at the time of application. This evidence was available to the Tribunal. The residents knew that it was ridiculous to try to turn back history. The chicanery of the Tribunal now allows all variations from the 1924 design to be precedents for further changes to overrun the remaining heritage values.
False evidence about the "survival" of a long extinguished residential zoning is the central reason for the Committee's rejection of the appeal. This extinguished residential status of the nominated land is mentioned in par.8, 10, 21, 22, 24 and 26. The inference being that a residential zoning automatically provides a permanent "trailing" residential status. This "trailing" status in turn prevents land ever acquiring any special significance in heritage terms, certainly not State heritage significance.

The nominated land was originally zoned residential from 1924 to the late 1950s, then properly rezoned to "Public Open Space Reserve – Recreation Reserve". A rezoning extinguishes absolutely all the rights and responsibilities of previous zones. The Heritage Council, Heritage Victoria, and the Shire have refused to provide any legal basis for their "survival or trailing" rights of an extinguished zoning.

Note par. 10 and 26 emphasising that a zoning extinguished more than 50 years ago automatically overrides subsequent zonings, history (i.e. cultural heritage), and heritage registration. Par.26 is particularly pernicious in its narrowness and ambiguity; "The Committee wishes... to clarify the powers and intent of... the Heritage Act. It is not the intent of the Act to prevent development." Remove the double negative context and does the Committee see the intent of the Act to assist development?

Perniciousness and ambiguity are inherent in the existing heritage registration of garden and road reserves. An asphalt car park built in 1970 adjacent to the nominated parkland has been heritage registered as a garden reserve. Whereas the 50 year old parkland is unregisterable because it was once residential land. This anomaly was dismissed as irrelevant. Whereas it is extremely relevant for development as it provides a precedent for all garden reserves to be asphalted. This fits in with current Council plans to develop heritage registered garden land, apparently with Heritage Victoria's assistance. Remember, "it is not the intention of the Act (and Heritage Victoria?) to prevent development."

GOVERNMENT'S DETERMINED MAINTENANCE OF AN ABUSE OF PROCESS AND A MISCARRIAGE OF JUSTICE.

Attached is a 30 December 2009 Council letter about development of the Ranelagh Drive area of registered land and disputed land. The letter repeats errors listed in the Decision and maintains the malfeasance within the Decision.

A. At line 14, the Ranelagh Drive area of nominated land "...was not part of the original subdivision...". An extremely serious falsification that is listed in par. 28, point 1 to be corrected at 18 August 2009.

B. At line 13, the same area "...has no heritage listing...". It has a Heritage Overlay, see par 25 and 28, point 3.

C. At lines 36-38, residents are intimidated into dropping objections as Heritage Victoria has already approved the development. This is very serious malfeasance as no permit for that development had been lodged by Council.
D. At lines 44-47, resident are advised that the development could be increased in area as it has at previous revisions.

E. At lines 19 and 27-29, residents are assured that concrete and asphalt skate and car parks "...can be successfully integrated with enhanced open space...". This emphasises the importance of the anomalous inclusion of an asphalt car park as a precedent in the original registration of garden and road reserves. It makes a mockery of heritage registered garden reserves in an estate of national cultural heritage significance.

F. If anyone asks Council for corrections or explanation, it is deemed to be libelous, defamatory, derogatory, and/or abusive. This silencing of ratepayers is then construed as approval.

CONCLUSION. This Heritage Council Decision and the subsequent actions of the Shire and Heritage Victoria exposes the planning processes within Victoria generally as seriously corrupted. Corrupted to the point of paralleling the worst of totalitarian state show trials. Trials where the state claims to act with impeccable probity by following procedural rules to the letter, while on the other hand, totally suppressing truth and reason from the legal process.

In this heritage registration case, it appears that the grounds for the application and appeal cannot be disparaged. The Executive Director has not mentioned nor critiqued the application and appeal grounds. The Executive Director has refused to respond to criticism of his decision and inclusion of false information. The Executive Director cannot provide evidence of anyone reading and critiquing any of the required multiple copies of supportive submissions. Points all indicative of the "show trial" phenomenon of totalitarian states

The application was based on resident ambitions to protect heritage as exemplified in the recent research by 3 separate consultants employed by Council costing hundreds of thousands of ratepayer’s dollars. One consultant, Context P/L, collected evidence from 500 man-hours of consultation. The pro heritage conservation results were dismissed by Council as subservient to all other development. That is, the 500 man-hours of consultation were irrelevant.

For an INQUIRY INTO GOVERNMENT PROCESSES OF DECISION MAKING, CONSULTATION, AND APPROVAL, this example demonstrates that-

- consultation in any form was totally irrelevant to the Heritage Council Tribunal, Heritage Victoria, and the Shire,
- decision making by the Heritage Council Tribunal, Heritage Victoria, and the Shire can be based entirely on fictions and ambiguities, and,
- approval can be by illegal decisions from abuse of process and miscarriage of justice.

As the Heritage Council Tribunal is answerable to the Minister for Planning, and as the Tribunal has deviated so far from expected standards of probity, it must be assumed that the Tribunal was acting within, or close to, prescribed standards. Whether those standards have been established by commission or omission is irrelevant.

Geoffrey Gordon 16 April 2010. 98 Wimbledon Ave., Mt. Eliza, 3930
Ranelagh Estate (H01605)
Mount Eliza

Heritage Council Registrations Committee
Hearing – Tuesday, 28 July 2009
Members – Ms Helen Martin (Chair), Professor William Logan, Mr Stuart McLennan

DECISION OF THE HERITAGE COUNCIL

After considering a recommendation and submissions and conducting a hearing into those submissions, pursuant to Section 42(1)(d)(i) the Heritage Council has refused to amend the Ranelagh Estate registration (H1605) and refers the recommendation and submissions to the Mornington Peninsula Shire Council for consideration for an amendment to the Mornington Peninsula Planning Scheme.

Ms Helen Martin (Chair)                Prof. William Logan                  Mr Stuart McLennan

Decision Date - 18 August 2009
APPEARANCES

Executive Director, Heritage Victoria
Mr John Hawker, Horticulturalist, appeared for the Executive Director.
Ms Frances O’Neill, Manager, Assessments, was available for questions from the Committee.

Nominator
Mr Geoffrey Gordon, resident of Ranelagh Estate.

Other parties that appeared
Mr Peter Brown.
Ms Diane Dick appeared on behalf of the Mt Eliza Action Group.
INTRODUCTION

The Place

1 Ranelagh Estate was included in the Victorian Heritage Register in 2005 (H1605). The registered place includes all the roadways and reserves at Ranelagh Estate, that is all the land marked L1 on Diagram 1605 held by the Executive Director being part of the land described in Lodged Plans 10716, 10717 and 10718. The place is of historical and aesthetic significance to the State of Victoria.

Nomination

2 On 9 January 2008, pursuant to Section 27 of the Heritage Act 1995, Mr Geoffrey Gordon lodged a nomination for an amendment to the Ranelagh Estate registration to include 128 and 130 Mt Eliza Way and 2-8 Ranelagh Drive, Mt Eliza (also respectively known as lots 540, 541 and 559-562 adjoining Lot G of Ranelagh Estate and hereafter referred to as ‘the blocks’) within the extent of registration. Mr Gordon provided information supplementary to the nomination dated 25 January 2008.

Recommendation of the Executive Director

3 On 12 February 2009, the Executive Director recommended that Ranelagh Estate not be amended to include the additional four blocks at 2-8 Ranelagh Drive and blocks 128 and 130 Mt Eliza Way adjoining Lot G as they do not have sufficient cultural heritage to warrant inclusion in the Victorian Heritage Register.

Preliminary Matters

4 At the commencement of the hearing, Mr Gordon submitted that the Executive Director’s submission contained a number of factual errors and that as the submission was ‘unprofessional’, the Executive Director should not be heard. The Committee acknowledged errors in the material prepared by Heritage Victoria (discussed below) but found that the alleged ‘unprofessionalism’ of the submission was not grounds to prevent the Executive Director from being heard.

Site Inspection

5 The Committee undertook an unaccompanied site inspection of the place on 22 July 2009.

SUBMISSIONS RECEIVED

Nominator

6 Mr Geoffrey Gordon nominated 128 and 130 Mt Eliza Way and 2-8 Ranelagh Drive, Mt Eliza for inclusion in the Ranelagh Estate registration for their social and historical significance to the State of Victoria.

7 Mr Gordon submitted that the registration should be amended for the following reasons:

August 2009
• The blocks were already part of the reserve when Ranelagh Estate was added to the Victorian Heritage Register in 2005 and the places in question are inseparable from the registered parts of Ranelagh Estate.

• The four blocks on Ranelagh Drive were included in a draft registration plan but were subsequently removed at the behest of the Mornington Shire Council.

• Parkland has inherent social significance and the significance of the John Butler Reserve has been increased by fifty years of resident action to defend it.

• 128 and 130 Mt Eliza Way have particular significance as they were added to the John Butler Reserve in 1971, after part of the original reserve was converted to a car park, in order to maintain the percentage of public open space planned by Walter Burley Griffin.

• The blocks on Ranelagh Drive have social and cultural importance as they provide public access to Lot G.

• Registration of the blocks will protect the land that is already listed and prevent the blocks being developed. If the land is developed and Lot G is not visible from the road its significance will be reduced.

• The land in question would link the registered Lot G with the registered road reserves.

8 Mr Gordon conceded that the land in question was originally designed to be house blocks but put to the Committee that the design of Ranelagh Estate is not static and has evolved over time.

The Executive Director

9 On 12 February 2009, the Executive Director recommended that registration of Ranelagh Estate not be amended to include the additional four blocks at 2-8 Ranelagh Drive and blocks 128 and 130 Mt Eliza Way adjoining Lot G as they do not have sufficient cultural heritage to warrant inclusion in the Victorian Heritage Register.

10 In appearing for the Executive Director Mr Hawker submitted that the nominated blocks are not of State significance for the following reasons:

• The basis for the inclusion of Ranelagh Estate on the Victorian Heritage Register was that the land included (the road systems and internal reserves) reflected the subdivision designed by Burley Griffin in 1924. The land within the blocks designated for residential development, such as those subject to this hearing, was not included in the registration. The land nominated by Mr Gordon was not part of the original public space of the Burley Griffin design.

• The additional land does not add to the understanding of the parkland and internal reserves of the original Estate but reduces the sense of Lot G as an enclosed park. The original intent of the design was to provide residents with enclosed parkland spaces which did not have major road frontages.

• Development of these blocks would not lessen the cultural heritage significance of Ranelagh Estate. Including these lots on the Victorian Heritage
Register would not necessarily prevent residential development as under the Heritage Act the Executive Director could not prevent the sale of the land and if asked for a permit would have to consider the fact that the original intended use for the land was residential.

- It is not necessary to register the blocks to protect the land that is already registered at Ranelagh Estate.

11 Mr Hawker also submitted that the nominated land is already protected under the Heritage Overlay of the Mornington Peninsula Planning Scheme.

12 Mr Hawker noted the submissions made by the nominator and Mr Brown relating to the zoning of the John Butler Reserve and the blocks in question. It was put to the Committee that rezoning of the land is a matter for discussion between the residents and the Mornington Peninsula Shire Council.

**Owner**

13 Mornington Peninsula Shire Council, the owner of 128 and 130 Mt Eliza Way and 2-8 Ranelagh Drive, Mt Eliza, advised in writing that it did not wish to appear at the hearing and did not refute the findings of the Executive Director.

**Other submitters**

**Mr Peter Brown**

14 Mr Brown made a submission supporting the Executive Director’s recommendation.

15 Mr Brown submitted that the blocks in question are not of State significance as the listing of Ranelagh Estate on the Victorian Heritage Register recognises key elements of the 1924 plan for the Estate such as the location of the reserves and the street pattern. In the 1924 plan the lots subject to this hearing were designed as house blocks and were not intended to be parkland.

16 The Committee noted that 2-8 Ranelagh Drive is covered by a Heritage Overlay. It was put to the Committee that 128 and 130 Mt Eliza Way should also be protected by heritage controls at the local level. Mr Brown also submitted that the park should be rezoned to Public Park and Recreation Zone (PPRZ).

**Mt Eliza Action Group**

17 The Mt Eliza Action Group made a written submission supporting the registration of the land at 128 – 130 Mt Eliza Way. However, when Ms Diane Dick appeared on behalf of the Mt Eliza Action Group she submitted that the Group endorsed Mr Brown’s submission (which supported the Executive Director’s recommendation that neither the Ranelagh Drive lots nor those in Mt Eliza Way should be registered).

**Other written submissions**

18 Ms Janelle Curtin lodged a submission opposing the Executive Director’s recommendation. Ms Curtin submitted that although the subject land does not appear to have formed part of the original Lot G designed by Burley Griffin, the
subject land has acquired heritage value as is has been treated as amalgamated with the original Lot G.

19 The Mt Eliza Community Association lodged a submission supporting Mr Gordon's application for the additional land to be included in the registration. Mr William Hanson lodged a submission opposing the Executive Director's recommendation and stressing the importance of the lots in Mt Eliza Way as part of the Butler Reserve, and as its only road frontage.

REASONS

20 The Committee is required to assess whether the blocks at 2-8 Ranelagh Drive and blocks 128 and 130 Mt Eliza Way are of sufficient cultural heritage significance to the State of Victoria to warrant an amendment to the Ranelagh Estate registration in the Victorian Heritage Register. Having carefully considered the submissions made to it, the Committee has concluded that the land does not meet the threshold for State significance under the criteria set out in Attachment 1 to this report and, in consequence, the places do not warrant inclusion in the Ranelagh Estate registration.

21 Mr Gordon's nomination was made pursuant to s.27 of the Act which states that the Executive Director may accept a nomination under that Section if he considers that (a) the cultural heritage significance of a registered place [...] would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; or (b) land surrounding a registered place or nominated place is important to the protection or conservation of that place or contributes to the understanding of that place. The Committee considers that the land nominated to be included in the Ranelagh Estate registration does not meet the requirements of s.27(1)(a) or (b) for the reasons set out in the Executive Director's submission. Lot G was originally intended as an enclosed area of open space, almost entirely surrounded by residential allotments. Development of the adjoining blocks would not necessarily detract from the State significance of the place, any more than would the development of any of the other residential lots in the Ranelagh Estate.

22 The Committee accepts Mr Gordon's submission that the subject land was part of the John Butler Reserve when Ranelagh Estate was registered. The land subject to registration in 2005, however, was the road systems and reserves as set out in the 1924 design by Burley Griffin. In this design the subject blocks of land were designated as house blocks. The fact that four of the subject blocks were included in a draft registration plan that was later amended is irrelevant.

23 Mr Gordon submitted that the land was socially significant (Criterion G). The submission focused on the community's attachment to the John Butler Reserve, as shown by a long history of attempts to protect the area from development proposals that were seen as inappropriate. Mr Gordon also put the view that the community considered the subject land to be part of the reserve and did not distinguish between the original Lot G and the areas subsequently added to it. The
Committee accepts that the local community values the area highly, but does not consider that this establishes that it has social significance at the State level.

24 Mr Gordon submitted that the land is of historical significance to the State of Victoria (Criterion A). His grounds related to the length of time during which the blocks have been part of the reserve. However, the historical significance of registered place (the reserves and road system of the Ranelagh Estate) is related to their representation of the original Burley Griffin design. The subject land, being originally intended to be residential lots, does not share this basis of significance, even though it forms part of the original subdivision.

25 Notwithstanding the comments above, the Committee is of the opinion that the subject land is of local heritage significance for social and historical reasons, as outlined by Mr Gordon in his submission. As such, the Committee recommends that the Mornington Peninsula Shire should consider protecting 128 and 130 Mt Eliza Way under a Heritage Overlay in the Planning Scheme, given that 2-8 Ranelagh Drive is already covered by a Heritage Overlay.

26 The Committee wishes to take this opportunity to clarify the powers and intent of registration under the Heritage Act. It is not the intent of the Act to prevent development. Hence, as was made clear in the Executive Director’s submission, registration of the blocks in question would not preclude a permit being issued for development on them, especially given that that they were designated as house blocks in 1924.

27 Mr Brown and Mr Gordon made submissions concerning the rezoning of the subject land and the John Butler Reserve. The Committee is of the opinion that this is a matter for discussion between the Mornington Shire Council and local residents.

28 Finally, the Committee acknowledges that a number of errors were made in documentation produced by Heritage Victoria in the course of considering the application for registration of the Shire-owned blocks adjoining Lot G. These mistakes, which have been acknowledged by Heritage Victoria, included:

- That the blocks did not form part of the original subdivision.
- That Lot G had been subdivided to allow for the construction of car parking.
- That the land was covered by the Heritage Overlay in the Mornington Peninsula Planning Scheme (whereas this applies only to the blocks in Ranelagh Drive).
- Incorrect addresses being given for some of the lots in one document.

29 The documentation relating to the registration of the Ranelagh Estate and the consideration of the application for extension of that registration should be amended to correct the above errors.
CONCLUSION

30 The Committee finds that 128 and 130 Mt Eliza Way and 2-8 Ranelagh Drive, Mt Eliza do not warrant inclusion in the Victorian Heritage Register and refers the recommendation and submissions to the Mornington Peninsula Shire Council for consideration for an amendment to the Mornington Peninsula Planning Scheme.
30 December 2009

Ms J Curtin
108 Wimbledon Avenue
MOUNT ELIZA, 3930

Dear Ms Curtin

RE  JOHN BUTLER RESERVE RANELAGH ESTATE MOUNT ELIZA

Thank you for your letter dated 28 October 2009 addressed to Cr Leigh Eustace with a copy to the Chief Executive Officer Dr Michael Kennedy OAM. Your letter was referred to me to respond. Please accept my apology for the delay in responding.

As you correctly observe there has been considerable public discussion regarding future options for the development of the John Butler Reserve which culminated in the adoption of the master plan by Council in 2008. The implementation of the master plan and related developments will be subject to ongoing review and consideration by Council through its annual budgeting capital works planning processes.

In relation to your comments regarding the proposed skate park location within the reserve I can advise that the allotment on which the skate park is proposed has no heritage listing. While the land is functionally part of the reserve area it was not part of the original subdivision based on the Griffin design. Regardless of this technicality, the appropriateness of locating a skate park in the proposed location was referred to Context for comment during the period they were preparing the Conservation Management Plan. Context concluded that:

"The skate park use is not in itself an adverse impact on the heritage values of the Ranelagh Estate and Lot G, as it is a contemporary recreational use which is in keeping with the overall intention of the open space reserves to be used for active and passive recreation."

Council’s Heritage and Urban Design Planner has also indicated no objection to the construction of the skate park on heritage grounds, certainly in its proposed location and possibly even were it to be located within the reserve itself (that is, on heritage listed ground).

The development of a Master Plan for the Butler Reserve sought to show how the skate park can be successfully integrated with enhanced open space, improved pedestrian access and changes to car parking.

The car parking changes proposed in the master plan may result in a slight reduction in car park numbers (or even the same number of car parks available now, depending on the final design) in a changed configuration.
The sealing of car park areas will allow more cars to be parked in a smaller footprint, and will reduce the dust and impact on the tree roots of the vegetation.

The proposed car parking treatments set out in the management plan were raised in discussion with Heritage Victoria and no objections were raised by them on heritage grounds. The consultation undertaken by Council identified a wide range of divergent opinions regarding many of the elements of the master including car parking. On balance it was considered that the proposed car arrangements represented a fair compromise between the multiple competing interests involved and do not represent the views of individual officers or councillors.

As indicated above the implementation of the master plan will be subject to review by Council and development of major elements of the plan such as the car parking proposals may be revised following the wider study of car parking needs in Mount Eliza.

Again please accept my apology for the delay in responding to you and if you wish to discuss this matter further please contact me at anytime on 5950 1830.

Yours faithfully

Alex Atkins
Director Sustainable Environment