26 March 2010

Attn: Mr. Gordon Rich-Phillips

Chairman
Standing Committee on Finance and Public Administration
Legislative Council
Parliament of Victoria

Dear Mr. Rich-Phillips,

Re: Submission to Inquiry into Victorian Government Decision Making, Consultation and Approval Processes

I enclose our submission requesting that your Committee urgently investigate new evidence of misleading and deceptive conduct in the Victorian Government decision making, consultation, and approval processes for the controversial Kew Cottages Development.

Evidence that has come to light since the Select Committee on Public Land Development finished taking evidence in June 2008 strongly suggests knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers in a Government cover-up of significant financial, and administrative irregularities in the Kew Cottages development.

**The Kew Cottages matter is especially significant for your current inquiry because of a number of apparent similarities to the Windsor Hotel Email Affair including:**

- A Government Media Plan designed to deceive and mislead the public;
- Planning and Heritage Approvals justified by a sham public consultation process;
- The direct and indirect involvement of the Minister for Planning in the latter processes.

**The matter is urgent because the Minister for Planning, the Executive Director of Heritage Victoria and other officers of DPCD have just commenced their assessment of Stage 3A of the Kew Cottages Development including restoration and conservation works for the heritage buildings to be retained on the site.**

Please do not hesitate to contact me if you have any queries.

Yours sincerely,

Brian Walsh

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enc:
From the Windsor Hotel to Kew Cottages
Its all in the Email..

1. The Kew Cottages Stage 1 Media Plan
Evidence that the State Government tried to sell Victorians a 'Pig in a Poke' on Main Drive Kew.

In July 2008 The Age reported allegations by Mr. Kevin Hunt, Former Victorian Manager, Walker Corporation, that billionaire developer Lang Walker in 2007 ordered changes to the design of houses already bought off the plan in a bid to cut costs and increase returns from redevelopment of the Cottages site (The Age 29-Jul'08)

Mr. Hunt allegedly warned that the changes could lead to disputes with purchasers which "would embarrass the Government as the vendor of the land."

The Government responded to the Age investigation by immediately issuing a written statement (28-Jul'08) in which the Government appeared to acknowledge changes to the houses but played down their scope.
"The KRS (Kew Residential Services) project is a joint venture between the state and Walker Corporation. As with any housing development minor design changes are made throughout the life of the project. The state is satisfied that any changes comply with building plans and specifications," the statement said.

However, the truth of the matter now appears to be very different to what the Government's media statement would have had the public, and the purchasers of the houses believe when the Age broke that story in July 2008.

Internal Walker Corporation documentation now reveals that the Walker/MPV (Major Projects Victoria) issue of "Design changes stage 1" was far from being resolved to the State's satisfaction in July 2008, and was in fact still outstanding over three months later.

In November 2008 the documents record that Walkers "have provided MPV with a further update of design changes that were made during construction" and that "MPV is to independently confirm that these are within the contract of sale."

How did the State Government try to avoid letting 'the Cat out of the bag'?
Walker Corporation documents prepared in October 2008, record that:
"Following discussions between Walker Corporation and Louisa Mcphee (MPV Communications Manager) it was agreed that the current focus of marketing of Stage 1 should be to achieve positive profiling through putting efforts into winning awards. A submission has been made for the PIA awards (unsuccessful) and UDIA awards."

(State PLG Report 23-Oct'08 p.15)

The timing of the latter agreement is significant because, as the October 2008 PLG Report makes clear, by that time all properties in Stage 1 had already been sold by the Government, and contracts had already been exchanged with purchasers.
It appears, therefore, that "Positive profiling" was no longer required to help attract new Stage 1
customers to Main Drive Kew, but rather to help defend the Government and the developer against the mounting tide of complaints from existing purchasers who felt that they had been ripped off.

2. The Kew Cottages Planning and Heritage Approvals Process.
The property moguls were not the only people having a hard time at Kew Cottages in 2008. While Lang Walker and Kevin Hunt, each claiming to have lost millions of dollars, fought it out in the Supreme Court of Victoria, Planning Minister Justin Madden had run into a few more problems of his own making.
In his eagerness to get play underway on Stage 2 at Kew Mr. Madden had somehow managed to approve a Walker Stage 2 Permit Application in April 2008 before it had even been listed on his Public Planning Register. The Minister then had to rush to get his Register problem sorted out before he was questioned about Kew Cottages in May 2008 by the Select Committee on Public Land Development.
The Planning Minister, therefore, must have been particularly disappointed to be later told that all his efforts to get play underway in Stage 2 at Kew had been in vain, because the Planning Permit he had approved in April actually presented a threat to the Heritage significance of the site, and would, therefore, have to be amended.

Minister Madden then appears to have turned briefly away from proving the "If you rush it - you stuff it" approach to Planning and Heritage Approvals at Kew Cottages, and set out instead to try the "Positive Profiling" approach as advocated by MPV.

When Walker's Kew Development Corporation was fined $50,000 for breaches of the Heritage Act in June 2008, the Government quickly responded by appointing the Principal of HCLD Pty Ltd, Ms. Helen Lardner as a Member of the State's peak heritage body, the Heritage Council of Victoria.

Minister Madden no doubt excelled himself with this excellent appointment to the Heritage Council, because Ms. Lardner is not only eminently well qualified professionally to hold such a prestigious State Heritage public office, but she was, and we understand, still is Walker Corporation's private Heritage Consultant on the State's highly contentious Kew Cottages Major Project.

Ms. Lardner may, therefore, in our submission be reasonably perceived to have been put in a rather difficult position by Mr. Madden. As a consequence, her appointment raises a number of questions about the Kew Cottages Planning and Heritage Approvals processes conducted by Mr Madden, as Minister, and the senior officers of his Department (DPCD).

For example, with regard to Ms. Lardner and her Expert Reports that have been relied upon as part of the State's Kew Cottages Planning and Heritage Approvals processes:

1. Has Ms. Lardner recognised that she now has a conflict of interest at Kew Cottages?
2. Is she managing that conflict appropriately (ie: in a manner approved by the Ombudsman)?
3. Was the Government's July 2008 appointment of Ms. Lardner to the Heritage Council of Victoria linked in any way to Walker's large political donations to the ALP?
4. Has Walker Corporation, for commercial reasons, at any stage successfully sought to restrict, restrain, or censor any of the views expressed in the Expert Heritage Reports that it has commissioned from Ms. Lardner and HCLD Pty Ltd?

3. The 'Censored' Heritage Report.
It now appears that at least one of the Kew Cottages Reports prepared for the Heritage Victoria Public Approval Processes by Ms. Lardner since her appointment to the Heritage Council was censored in a manner designed to remove Ms. Lardner's professional opinion on the possible National Significance of Kew Cottages.

Thus, the opening paragraphs of Ms. Lardner's Historical Assessment in her Draft Report which read:
The Former Kew Cottages (Kew Residential Services) have State, and possibly national historical significance as reputedly the first Government institution set up for intellectually disabled children in Australia" (Historical Assessment Introduction p.6 our emphasis added see attached)

was subsequently truncated by deleting the words "and possibly national" from the "Final Report", so that the introduction now reads rather strangely (given the reference is to "Australia" rather than "Victoria")
The Former Kew Cottages (Kew Residential Services) have **State historical significance as reputedly the first Government institution set up for intellectually disabled children in Australia**" (Historical Assessment Introduction p.6 our emphasis added see attached)

This mischievous attempt to play down the possible national historical significance of the the Cottages appears to have been instigated by Walker Corporation, and cynically designed to help undermine the Planning and Heritage public consultation processes.

Why Ms. Lardner might have agreed to her professional opinion on such an important matter as 'national historical significance" being effectively censored in such a manner is less clear.

The Report in question, the Kew Cottages "Conservation Management Plan, is after all, one of the most significant Kew Cottages Heritage Reports relied on by all levels of Government and the public including The Minister for Planning, The Heritage Council, Heritage Victoria, DPCD, Boroondara Council, The National Trust, and the Kew Cottages Coalition.

The Conservation Management Plan was prepared by Ms. Lardner and HCLD Pty Ltd, and was commissioned by Walker's Kew Development Corporation Pty Ltd to address Condition 2(IV) of Heritage Victoria Permit No P9639. The Final Report, from which Ms. Lardner's expert view on the national historical significance of the Cottages to Australia's cultural heritage had been removed, was presented to Heritage Victoria in September 2008

As one of the successful community nominators for the State Heritage Council's Registration of Kew Cottages in 2004, the Kew Coalition, is of course particularly interested in Ms. Lardner's expert opinion on the possibility of the national historical significance of the Cottages, and how the State of Victoria, as the owner, the developer, the planning authority, and the Heritage authority, should best respond to that possibility.

With your Committee's assistance, therefore, we would like to respectfully request, through you, the public release of an unexpurgated edition of Ms. Lardner's Kew Cottages Cultural Management Plan, together with:

1. Further and better particulars of any other sections of her report that were effectively censored by Walker Corporation, and why?
2. Ms. Lardner's professional advice on how the State of Victoria can adopt best practice in now urgently dealing with the possibly national historical significance of Victorian State Heritage precincts such as both Kew Cottages and the Windsor Hotel?

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Chairman
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Legislative Council
Parliament of Victoria

Dear Mr. Rich-Phillips,

Re: Submission to Inquiry into Victorian Government Decision Making, Consultation and Approval Processes

I enclose an Addendum to the our recent submission (copy enclosed).

This Addendum requests that your Committee take immediate action to help ensure that the Kew Cottages redevelopment is halted until:

a) Both House of Parliament have considered the Ombudsman Report on the Probit of the Government's Walker Corporation Kew Cottages contract; and

b) The Government can provide the promised financial benefits to the services for the disabled,

given that:

1. Up to 27 hectares of prime Crown Land dedicated to the care of the disabled is being permanently alienated from public ownership;
2. The Government has sold the Stage 1 Crown Land at below market value;
3. Stage 1 financial losses from the construction and sale of 55 private houses are suspiciously high, and reported to exceed $17 million;
4. Designs of Stage 1 houses already sold off the plan by the Government were changed in a bid to cut costs;
5. Some Public Administration and Media Plans related to Stage 1 were designed to deceive and mislead the public about Government decisions and approvals;
6. The Government's Planning and Heritage Approval processes have been deeply flawed, and have included sham public consultation processes;
7. The Minister for Planning, Mr. Justin Madden, is the responsible planning authority, and has failed to fully and frankly inform the Parliament of his knowledge and/or involvement in the above matters.

Please do not hesitate to contact me if you have any queries.
Yours sincerely,

Brian Walsh

President
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Addendum.

**Why Kew Cottages Planning and Heritage Approvals Must Stop**

*Importance of trust*
Trust in public institutions lies at the very heart of our society and government.
It is a fundamental relationship that cannot be guaranteed or assumed; rather, it needs to be actively generated and maintained.

Understanding Conflict of Interest
Conflict of Interest in the Public Sector,(p.12)
Ombudsman Victoria March 2008

On 11 March 2010 the Opposition called on the Premier to:

*..halt this redevelopment until he can provide the promised financial benefits to the services for the disabled, given that 27 hectares of prime Crown land, dedicated to the care of the disabled, is being permanently alienated from public ownership.*

Mr McINTOSH (Kew)
Shadow Minister for Integrity of Government.
Hansard 12-Mar 2010

We understand that the Premier has still not responded to Mr. McIntosh's request.

1. **An Alice in Wonderland Approvals Process.**
However, the controversial property developer Walker Corporation is still bizarrely pushing ahead “on behalf of the State of Victoria” in seeking further Planning and Heritage Approvals “from the State of Victoria”.

The first Application seeks the approval of a a Stage 3A Planning Permit by the Minister for Planning, the second Application seeks the approval of a Stage 3A Heritage Permit by the Executive Director of Heritage Victoria.
Walker Corporation lodged their applications on 11 February 2010.

2. Evidence that the Planning Minister has Approved Handing Out Public Land 'For Free' at Kew.

When Mr. Madden was asked by Mr. Kavanagh on 23 February 2010 how the Government had managed to lose more than $17 million on the first stage of development at Kew Cottages, and

how in particular the government manages to lose money just by selling land that it already owns?

Minister Madden responded with a verbal 'pea and thimble' trick:

1. The Minister avoided admitting to Parliament that the Government was the vendor of the land,
2. The Minister failed to tell Parliament that the Government had a commercial "joint-venture" profit sharing agreement with 'the developer' (Walker Corporation)
3. The Minister invited Mr. Kavanagh to look under another thimble for an answer to his question..

if there is an issue about the project, that should be directed to the developer, who has made money or lost money

Mr. Madden said, and then emphasised that:

What is of particular importance here is that the land was disposed of....

At face value then, Mr. Madden appears to want Mr. Kavanagh, the Parliament, and the people of Victoria to believe that as Minister for Planning Mr. Madden is simply not involved and not interested in the economic impact on the State of Victoria, of Planning Applications put before him.

But Mr. Madden's verbal sleight of hand is simply nonsense.

Just a few minutes earlier, on the same day in Parliament, Mr. Madden had expressed his great delight and interest in being able to identify and 'fast-track decisions' "particularly on key building projects" on economic grounds:

..As well as that, early last year the Premier announced that the government would fast-track decisions, particularly on key building projects, to secure more jobs to help Victorians through the global financial crisis. These broader reforms have centred on identifying strategic projects that will deliver economic benefits and employment benefits -- jobs, jobs, jobs for Victorians .. (Hansard 23-Feb '10)

And when Mr. Madden appointed (13-Nov '09) the Advisory Committee to advise him on the proposed Windsor Hotel redevelopment, his Terms of Reference for the Committee included:

An economic assessment of the applicant's justification for exceeding the suggested height controls in DD02. This should include comment on the applicant's requirement for the proposed number of rooms and other hotel facilities to allow the project to be economically viable and operate at a 5-star standard.

An assessment of the potential for economic benefit to the State. This should include review of job creating potential and other economic benefits suggested by
the applicant. It should include analysis of the ability of the proponent to complete the project in terms of skills, experience, financial resources and future planning/construction strategy.

Any other relevant matters raised in the course of the Advisory Committee hearing.

Any suggestion, therefore, that the Parliament accept that the Minister for Planning’s decision making process on the Stage 3A Kew Cottages Planning Application should ignore the extraordinary $17 million loss suffered by the Kew Cottages redevelopment in Stage 1 is also unmitigated nonsense.

A probable cause for Mr. Madden’s attempt to ‘turn a blind eye’ to the Government repeatedly building and then selling houses for $1.4 each on land it already owned in Kew, and still somehow managing to loose $300,000 on each sale might be simply that the Minister has been mislead, or that the Minister is incompetent, and/or embarrassed by the huge financial losses reportedly suffered by this Government joint-venture with Walker Corporation, or the Minister may be trying to mislead Parliament.

Whatever the cause, the price of Mr. Madden’s folly would appear to not only be a cover up of the Government having sold millions of dollars worth of the Public land in Stage 1 at Kew Cottages at below market value - thereby effectively giving away some of that Public Land for free - but a willingness on Mr. Madden’s part to further compound the problem by continuing to approve Planning Applications (Stage 2 etc) without proper scrutiny, thereby encouraging the Government to go on giving away more Public land for free.

Because, as Mr. Madden also carefully avoided telling Parliament, most of the 27 hectares of Kew Cottages land, including all of the land in Stages 3-7 has still not been sold, it is still Public Land, it is still owned by the Victorian Government.

Because the Government still owns most of the Kew Cottages land, therefore, in our submission a more responsible approach by the Minister for Planning would be to support a halt to the development, and to immediately appoint an Advisory Committee, pursuant to Part 7. S.151 of the Act, to undertake a full and public assessment, of the current Planning Application, including a full economic assessment of what went wrong in Stage 1 - and why?

3. Loss of Public Confidence in the Victorian Planning System

As Minister Madden is the 'Responsible Planning Authority' for Kew Cottages, it is significant, that despite the loss of public confidence in the State Planning system since the Windsor email affair:

- The Minister has failed to request the Secretary of the Department of Planning and Community Development (DPCD), to appoint a Probity Auditor for the Kew Cottages Planning Application;
- The Minister has failed to appoint an Advisory Committee for Kew Cottages Planning Application;
- The Minister has failed to publicly exhibit the Kew Cottages Planning Application.

We understand that the current Planning Application seeks to rely on earlier approvals by the Minister, including The Kew Cottages Walker Development Plan (2007), which provides the planning blueprint for the whole of the 27 hectare site.

However, the latter approach also appears suspicious because there are in fact major differences and inconsistencies between the current Planning Application and the prior Government approvals for Kew Cottages.
For example, we understand Boroondara Council have now written to the Government pointing out that:

"The proposed development is not in accordance with the approved Walker Development Plan dated November 2007. It would appear that the plans have been modified, that being in relation to the proposed road layout and network and the type of dwellings abutting the heritage core. Furthermore, it appears that the open space areas have been reduced in size as a result of the modifications. Concerns are raised in relation to any reduction in open space as a result of development or road networks."

Letter from Boroondara Council to DPCD
12-Mar 2010 (Emphasis added)

This is significant, because it raises the question of how the Minister, who no longer has the confidence of the Parliament, will attempt to resolve these planning differences and inconsistencies without the advice of an independent Advisory Committee or Expert Panel?

According to Minister Madden's answer to Mr. Kavanagh's question in the Chamber on 23 Feb 2010, the Minister proposes simply to take the advice of his Department ie:

If there are any controls that I am not aware of that I need to be made aware of on any further stages, I am happy to make those inquiries of my department. I am happy to receive that information, and I am happy to convey that information to the member opposite as I receive it.

Hon. J. M. MADDEN (Minister for Planning)
Hansard 23-Feb 2010

However, this is problematic, particularly given the Parliament's lack of confidence in the Minister, the Minister's failure to Exhibit the Application, and the current inquiry by the Ombudsman into the probity of the Government's Kew Cottages Contract with Walker Corporation. As the Ombudsman has pointed out:

...when discussions and decision making are removed from the public arena, it tends to result in the promotion of private interests and the corruption of proper administration.

Ombudsman Victoria
Conflict of Interest in Local Government
2008 p.18

4. Victorian Heritage Councillor for Hire?

The Kew Cottages Stage 3A Heritage Application was placed on public exhibition from 17 February to 3 March 2010. Kew Cottages Coalition has lodged an objection to the Heritage application, and following the recent collapse of public confidence in the Government's Planning and Heritage Approvals processes we have also requested that the Secretary of DPCD appoint a probity auditor.

We consider it significant that:
1. The Expert Heritage Report publicly exhibited in support of this latest Heritage application states that it "has been prepared by HCLD Pty Ltd for Kew Development Corporation Pty Ltd" ("Heritage Impact Statement" p.2);

2. The Expert Heritage Report fails to disclose that the Principle of HCLD Pty Ltd, Ms. Helen Lardner, and principle author of the Expert Report, is also a Member of the Heritage Council of Victoria;

3. The Heritage Application also seeks to rely on the 'Censored "Conservation Management Plan" (2008) that was prepared by Ms. Lardner. (See our submission attached);

The public exhibition of Ms. Lardner's Expert Heritage Report in the above manner and circumstances is significant because in our respectful submission it is an affront to good governance by the State to allow a State Heritage Council Member to make private, commercial representations to the Executive Director of Heritage Victoria in this manner without full public disclosure within the Heritage Application process as to:

- The shared administrative relationship that exists between Heritage Victoria and the Heritage Council of Victoria, and
- Ms. Lardner's professional standing, status, roles, and contact with:
  1. HCLD Pty Ltd (A Victorian based Private Company)
  2. Heritage Victoria (A Victorian Government Agency within DPCD)
  3. Kew Development Corporation (A NSW based Subsidiary of Walker Corporation)
  4. The Heritage Council of Victoria (An Independent Victorian Statutory Body)
  5. Walker Corporation (A NSW based Property Developer)

The failure of good governance and lack of transparency is all the more significant in this case given:

- The Ombudsman's current Investigation into the probity of the State's Kew Cottages Contract with Walker Corporation;
- The Report and Recommendations of the Select Committee on Public Land Development;
- The Government "State Significance" status of the Kew Cottages development;
- The Government conflict-of-interest as owner of Kew Cottages;
- The highly contentious nature of the Kew Cottages "Demolition Permits";
- The nature and timing of Walker political donations;
- The nature and timing of legal action taken against Walker Corporation by Heritage Victoria for breaches of the Heritage Act at Kew Cottages;
- The timing of Ms. Helen Lardner's subsequent appointment to the Heritage Council on the recommendation of the Minister for Planning, Mr. Justin Madden.

Imagine if it were subsequently discovered by the public that the Halim Family had secretly commissioned one of Mr. Madden's Heritage Council of Victoria appointees to write the Windsor Hotel Heritage Permit Application that was recently advertised, and then approved, by the Executive Director of Heritage Victoria!

5. Conclusion.

It appears that:

1. Up to 27 hectares of prime Crown Land dedicated to the care of the disabled is being permanently alienated from public ownership;
2. The Government has sold the Stage 1 Crown Land at below market value;
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designed to deceive and mislead the public about Government decisions and approvals;
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== Copy Kew Cottages Coalition Submission==

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2. The Kew Cottages Planning and Heritage Approvals Process.
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   For example, with regard to Ms. Lardner and her Expert Reports that have been relied upon as part of the State's Kew Cottages Planning and Heritage Approvals processes:
   1. Has Ms. Lardner recognised that she now has a conflict of interest at Kew Cottages?
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