

3 October 2007

Richard Willis
Secretary, Legislation & Select Committees
Department of the Legislative Council
Parliament House
East Melbourne, 3002

Dear Mr Willis,

Please find attached to this email the following documents, which constitute the submission from the Friends of Chicquita Park to the Public Inquiry into the Sale and Development of Public Land and Open Space:

1. Submission to Public Land inquiry. This documented is supported by the following:
2. FCP Critique of amendment
3. Submission by FCP barrister to planning panel
4. Submission on amendment April 28, 2003
5. FCP submission to Council July 05

I would like the opportunity to present to the Inquiry, and am aware that several other people from the local area, including Kingston Councillors Rosemary West and Greg Allabaster, would also like the opportunity to make presentations. I wonder, therefore, if it would be possible to hold a hearing at the scout hall in Chicquita Park. This would enable local residents to witness the hearing and give the Inquiry members first-hand knowledge of the site in question.

I hope that email submission of these documents is adequate. Please let me know if it is not.

regards

Colin Long
Secretary, Friends of Chicquita Park

This is a story about the destruction of a park in Mentone, in Melbourne's bayside suburbs. It is the story of a local community's fight, for six years, to save its park, and its ultimate failure in the face of apathy and connivance from three levels of government. It is a story that says much about urban planning in contemporary Victoria: about the failure of the different levels of government to work together to realise community goals; about the bankruptcy of vision at all levels of government; about the power of private capital to render sound planning redundant; about the withering of local government democracy; about the failure of planning professionals to defend the principles and ethics of planning in their effort to defend the interests of property developers.

Chicquita Park is a 1.5 ha parcel of land near Warrigal Road to the east of the Nepean Highway in Mentone. Once a part of the Mentone Racecourse, it was named after a local horse and 1950 Melbourne Cup runner-up. It was sold to the Defence Department in the 1950s, but does not appear to have been used for any substantial defence purposes. The remainder of the racecourse was subdivided for housing in the 1970s, and in 1975 the Defence Department land was leased to the City of Mordialloc for a peppercorn rent for 25 years to be used as a public park.

According to an ex-Mordialloc councillor (now Associate Professor of Planning at RMIT), Dr Michael Buxton, the intention was always for the local Council to eventually purchase the land, but this never occurred. Most local residents never knew that the park remained in Commonwealth Government ownership, presuming that the local council's signage announcing the park's name, and the playground equipment, indicated that it was just a normal local park. New residents who did enquire about its status were assured by local council officers that it was a permanent park.

The park's un-structured, semi-bushland feel gives it a distinctive character much loved by local residents. It is one of the few examples of remnant native vegetation in a residential area of the bayside suburbs, and some of that vegetation is of local and even regional significance.

In 1999 the Commonwealth Government, in a revenue-raising exercise, decided to dispose of Chicquita Park. It offered the land to the local council, now the City of Kingston after the Kennett-era local government mergers, but with substantial financial problems remaining as a legacy of the merger, the Council said it could not afford to buy it. The local residents, informed of the move to sell the land, established a defence group called the Friends of Chicquita Park (FCP), and called for the land to be given to the Council. Why, after all, should local ratepayers have to pay again for land that they already owned as tax payers? The same situation occurred at Point Nepean, of course, where the State Government also refused to use public money to buy public land from the Commonwealth.

But with government departments aware of the price of everything and the value of nothing, the Commonwealth decided to proceed to sale of the land via a public tender. Entreaties by the FCP to the then-Parliamentary Secretary to the Minister for Defence, Brendan Nelson, elicited only hollow sympathy. His successor, Fran Bailey, also refused to ensure that the land was retained in public ownership.

In its efforts to protect the park the FCP received from this early stage little support from the Councillor in whose ward Chicquita Park was located. Although in his election material the one-time Liberal Party member, Ron Brownlees, had promised to fight for the park's retention, he argued strongly in Council meetings that the best that could be hoped for would be the retention of 25 percent of the park as public open space through a Section 173 agreement negotiated between the Commonwealth, the Council and any purchaser. Brownlees tried unsuccessfully to convince the FCP that this was the best that could be achieved. (Some time later, after he had been defeated in a Council election by a member of FCP, Brownlees' true colours were revealed when he appeared at a Planning Panel hearing supporting the new private owner's plans for the redevelopment of the land.)

Presented with the bitter reality that the Commonwealth Government was determined to sell the park, despite the overwhelming wishes of the local community and the Council's stated desire to retain it, FCP continued to lobby the Council to purchase the land. FCP argued that the land should be valued at open space valuation, making it affordable for the Council, but the Government demanded full market value (or so it at first seemed). As it became increasingly clear that the Council was unlikely to be able to purchase the land, FCP turned to the State government.

Because of Australia's particular constitutional arrangements, Commonwealth Government-owned land is not subject to State Government legislative control. It exists, in effect, in a planning vacuum. However, when it leaves Commonwealth ownership, for instance through sale to a private owner, the land must be made subject to State planning controls. Typically, the moment Commonwealth land passes out of its ownership, the State applies an interim zoning control which usually reflects the so-called underlying zoning, until a Planning Scheme Amendment can be prepared, exhibited and considered, and a permanent zoning imposed. In the case of Chicquita Park, which is surrounded by mostly low density housing, the underlying zone was Residential 1.

However, the State Minister can impose any zone he or she wishes, with the proviso that privately-owned land cannot be subject to a Public Park and Recreation Zone. If such a zone were to be imposed on Chicquita Park, a buyer in the form of a public authority would have needed to be identified. At this point neither the State Government nor the local Council was willing to pay for the land at residential valuation.

As an alternative, FCP suggested to the Minister for Planning that if he were to announce that he would refuse to zone the land for residential development – a strategy he employed in the fracas with the Commonwealth over Point Nepean – this would scare off any private developer and torpedo the Commonwealth's sale. A deal could then be negotiated to transfer the land into Council ownership at a more reasonable price.

FCP saw this strategy as not only providing an appropriate outcome for the park, but as an important means by which the State government could defend its constitutional powers against encroachment by the Commonwealth. Indeed, the transfer of land out of Commonwealth ownership raises a number of issues that have been given little or

no consideration at any level of Australian government or by planners. By selling its land to private owners the Commonwealth effectively pre-empts the planning powers of the State government, since it limits the type of zone that the State can impose (the PPRZ cannot be imposed on private land). Given that land use planning is recognised as the constitutional preserve of the States, the Commonwealth is acting at least contrary to the spirit of the Constitution, if not the letter. A solution to this problem would involve the Commonwealth informing the State in which Commonwealth land is to be sold of the sale intention. The State Government would then undertake a planning scheme amendment process to determine the appropriate use of the land. If an appropriate use were to be public parkland, the State would identify a public authority willing to pay for the land at open space valuation or (preferably) would negotiate its transfer out of Commonwealth ownership at no or minimal cost. If private residential development was the appropriate planning outcome, the Commonwealth could then proceed with its sale. In other words, the State's ability to ensure the orderly management of land requires *planning*, not the reactive facilitation of the Commonwealth Government's real estate activities. A similar process could be implemented when land is to be transferred out of state government ownership.

Unfortunately, for reasons that remain obscure to this day, the State Government refused to act in the suggested ways. Instead, through the local State Labor MP, Janice Munt, FCP was told that the Minister would proceed through the usual process, imposing an interim zone, calling for a planning scheme amendment to be drawn up, and establishing a Planning Panel to consider it. The recommendations of the Panel, FCP were assured, would be followed by the Minister – after all, the ALP Government was keen to differentiate itself from the previous Coalition Government, whose Minister for Planning, Robert Maclellan, had become notorious for his interventionism. Confident of the strength of its local support, and of the correctness of its arguments, FCP decided to show its faith in the planning system, and to engage in the system.

In April 2003 an independent panel was duly established to consider the planning scheme amendment drawn up by Kingston Council. The amendment sought to The Panel's findings clearly favoured the retention of the park in its entirety, although it recommended that two studies be conducted to affirm this as being the right course of action: an open space study, and a vegetation retention study. These studies were subsequently conducted by consultants hired by Kingston Council, and found that all of the land was needed for open space and that maintenance of the vegetation and revegetation were possible if the entire site were retained free of development. The Panel had recommended that if these were the findings of the studies, the Council should seek to apply a public acquisition overlay to the site. Unfortunately, citing reasons of cost, the Council refused to do so.

The planning process was drawn out for several years. At each stage FCP made considered submissions after extensive consultation with the local community. It was pointed out that development of the land was contrary to local and state planning policy. In fact at the local government level there were *no* legitimate planning considerations to allow the subdivision of Chicquita Park for housing. In *no* Kingston City Council documents was the park identified as a desirable site for housing. Indeed, the only planning documents that the park has featured in were open space planning documents in which it was considered to be required open space.

At the State level of the planning system, development of the park was contrary to several aspects of *Melbourne 2030*, especially in relation to the preservation of open space, the protection of native vegetation, and the Activity Centres policy: the site is not within a designated Activity Centre and the intensity of the proposed development was therefore not supported (nor was such intensive development supported under local policy, which identified the site as being within an incremental change area).

The unarguable conclusion after the several years of planning work, including an Independent Panel hearing, was that there was no support for the development of the park on proper planning grounds. The fact that the park is, nevertheless, being developed indicates a systemic failure of planning of extraordinary dimensions. Some of the blame clearly lies with the State government, which could have, early on, indicated its refusal to apply anything other than a public use zone on the land. This would immediately have taken the land out of the hands of speculators and developers. Having refused to do this, it left a financially-strapped local government authority to try to reclaim the park from private ownership. The state government also refused to take any actions that would have seen the recommendations of the Planning Panel implemented. In effect the state government chose to sacrifice the integrity of the planning system and good planning practice in order to defend the interests of a private speculative developer, and to allow the real estate activities of the Commonwealth government to proceed unchallenged.

The role of Kingston Council in all of this is considerably more problematic and at times rather murky. Very few of the elected Councillors demonstrated any commitment to defending good planning practice and the interests of the community. Rosemary West was one of them. Several of the rest appear to have felt their role to be defenders of the interests of the private developer, and it is known that some of them met regularly with the developer or his advocate, the former Liberal MLA, Geoff Leigh.

More problematic still was the role of the Council officers, who at almost every turn seemed determined to thwart the effort to save the park. The manager of Strategic Planning was even found to have written a submission to the Open Space Strategy on behalf of a local cricket club that was in direct contradiction to stated Council policy.

The role of some councillors, the connections between them and Council officers and the developer and the developer's advocate, Geoff Leigh, remain shrouded in murkiness. A public enquiry into these connections and the way that the planning process for this land has been conducted should be established.

The case of Chicquita Park shows that Victoria's planning system is in crisis. It is not because, as many planners and developers would have us believe, councils and councillors have been captured by narrow sectional interests, and that the professional views of planners are being lost in the raucousness of politics. Planning is not just a professional, technical activity. It has always been a political activity because it is about the allocation of scarce goods and services in space. That is fundamentally a political process. The problem is that our system is so bad at providing a process by which the competing political *values* expressed in planning can be worked out.

The current system has become an awkward mix of technocratic responses and political lobbying that makes no-one happy and produces generally ordinary outcomes. Premier Kennett tried to load the dice in favour of the planners by circumscribing the roles of elected councillors and giving more power to the council officers. Kennett's goal in doing this was to reduce the public scrutiny of planning applications and, ultimately, facilitate development. A question that needs to be asked is: why was he so confident that putting more control in the hands of planners would help facilitate development? He was, of course, right, but it remains an interesting question, given historically the profession of planning largely arose to put limits on the uncontrolled development of the city. The reality is that over the last two decades at least, as real estate development has come to be seen as a valid sector of economic activity in its own right (the shifting of capital into speculative real estate markets has paralleled the decline in the importance of industry) and promoted by governments as such, planners have taken on the role of development facilitators rather than development controllers. There is an increasing disjuncture between the world of university planning schools – where academics still teach the social role of planning and the importance of community involvement – and the world of consulting firms and local government, where planners are quickly forced into seeing developers as their real clients and the community as a troublesome obstruction to 'development'.

Despite the growing power of planners in local government bureaucracies, and the increasing technical sophistication of the planning profession, local communities and their political representatives – and for some reason this seems to surprise and annoy planners – continue to want to have a say in how their local environments are managed. This causes conflict. The solution is not to produce an even more technocratic system than already exists and to exclude local communities even further. It is to devise a system through which the competing needs of local communities, strategic planning policy makers and developers can be worked out in a much less legalistic way. Planners need to get much better at explaining to people why strategic plans and local policies have been devised in the way they have. There is a huge amount of community resentment as a result of years of bad planning outcomes, largely because necessary efforts to achieve urban consolidation have been used as a cover for speculative real estate development. Planners aren't trusted, and nor are planning policy makers.

Thanks to the determination of local community members, FCP and local councillor, Rosemary West, a little over 40 percent of Chicquita Park will be spared development. However, most of the native vegetation stands little chance of survival and really usable open space has been lost. The remnant park will serve primarily as a very nice setting for the new houses and increase their market value and the developer's profits. Meanwhile, the cost of maintaining the "park" will be borne by the broader ratepayers who lost more than half of their valued local open space. For local residents the destruction of the park has been devastating. Some have already moved away. Others view the new houses and their potential new owners with bitterness. More problematic in the long term is the realisation that all of the best planning policies in the world mean little when challenged by an aggressive developer intent on profit. More worrying again is the fact that all levels of government failed to defend the public interest and sound strategic planning policy: in fact, in many cases governments and their employees actively facilitated the undermining of what they are elected or employed to uphold.