

# CORRECTED VERSION

## SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Apollo Bay — 8 November 2007

### Members

Mr D. Davis

Mr P. Hall

Mr P. Kavanagh

Mr E. O'Donohue

Ms S. Pennicuik

Mr B. Tee

Mr E. Thornley

Chair: Mr D. Davis

Deputy Chair: Mr B. Tee

### Staff

Secretary: Mr R. Willis

Research Officer: Ms C. Williams

### Witness

Mr N. Longmore, barrister and solicitor.

**The CHAIR** — I declare open the public hearing of the Legislative Council Select Committee on Public Land Development. Today's hearing is in relation to our terms of reference on public land development and the alienation of public land. I welcome Neil Longmore, barrister and solicitor. All evidence taken at this hearing is protected by parliamentary privilege as provided for by the Constitution Act 1975 and further subject to the provisions of the Legislative Council's standing orders. Any comments you make outside the hearing may not be afforded such privilege. Witnesses will be provided with proof versions of the transcript in the next couple of days. I wonder if you might like to make a few opening comments first of all, and then we might ask some questions. I thank you for your distributed note.

**Mr LONGMORE** — Do you want me to address this?

**The CHAIR** — Please go forward.

**Mr LONGMORE** — I will not make a speech, but I will generally read from this, because it is the format I am more comfortable with, if you are happy to allow me to do that.

**The CHAIR** — Absolutely.

**Mr LONGMORE** — I thought in the half-hour I can address the points, but I can move though it a bit quicker, or you are welcome to ask some questions.

**The CHAIR** — No, you can move through it at a steady pace.

**Mr LONGMORE** — It is pleasing to be able to speak to a parliamentary committee on this subject, and I thank you for coming to Apollo Bay for this hearing. Parliament's ability to review the actions of the executive are such an important part of a vibrant and functioning democracy, a part that needs to be vigilant in an era of growing executive power that can otherwise operate unseen through ministries, departments and agencies to the detriment of the community's confidence in democratic processes. In the modern era of increasing executive discretion at both local and state government level it is easy to forget that Parliament is the supreme rule-making body with ultimate oversight of the functions of government. The existence of this committee and its willingness to examine the important role of public land in the life of the community is an affirmation that democracy is working in Victoria.

Evolution of public land: the concept of public land is a relatively new one as measured against the development of parliamentary democracy. It is immediately obvious that we have inherited the English system when we see that public land is still called Crown land in Australia. Following the annexation of Australia and the establishment of the colony of Victoria, all land was held by the Crown and still ultimately is, with the Crown as the eminent domain. The colonies of the British Empire, however, have experienced a different set of processes in relation to public land compared to the peculiar historical circumstances that were recognised in the local system that then applied in the kingdom of England. England went through an internal conflict where the rights of commoners to 'common' land were disputed for several centuries. English parliaments, controlled by landowning interests, used the power of Parliament to enact thousands of enclosure acts that effectively privatised vast tracts of England that had formerly been a relatively undeveloped public resource for local communities.

As urbanisation increased in the latter part of the 19th century a middle class movement gradually gained leverage power in the English Parliament. In one manifestation they were called the Commons and Footpaths Preservation Society. They realised the commons and rights-of-way that were rapidly disappearing were needed to provide breathing space for the expanding metropolis of London. They succeeded in having many enclosures stopped and the commons declared as parks, thereby initiating the modern trend to ensure that urban growth is always balanced by a substantial amount of open space to keep cities healthy and livable. This aspect of amenity through the provision of publicly owned open space in both urban and rural areas has become, almost unnoticed — the hallmark of sustainable and civilised living in Western societies. This committees should feel proud that its interest in this subject is part of a long tradition of resisting encroachment by powerful groups wishing to exploit a common resource. Maybe this book is in the parliamentary library. It is quite a rare book, but it is a good history of that movement that occurred last century.

**The CHAIR** — What is the name of it?

**Mr LONGMORE** — It is called *Commons, Forests and Footpaths* by Lord Eversley. It is pretty well a history of the Commons and Footpaths Preservation Society, which was a very active parliamentary group. It took

on court cases and then had parliamentary reform through its efforts. The colony of Victoria had a functioning Parliament at the same time as the movement in England arose, and as land was parcelled up across the colony the Crown reserved large areas for public purposes, probably imbued by the same spirit that was afoot in the mother country. The reserving of much of Victoria's coastal strip in this era has had an enormous impact on Victorians' subsequent access and enjoyment of the coast and has enabled government to have a large say in control of development on the coast and to plan for and implement strategies of coastal protection that are universally admired. In many other countries, coasts are privately owned and beach culture is not the egalitarian experience it is in Victoria. The current regime limiting Crown land leases to no longer than 21 years and requiring that all improvements made in that time revert to ownership of the Crown at the end of the lease demonstrates how strong the tradition of protecting public land has been in Victoria. Suggestions that this regime can be changed without jeopardising Victorians' particular coastal culture should be viewed very critically through the prism of a long historical and cultural struggle to protect public land from alienation, especially that which plays a large part in Victorians' sense of identity.

Apollo Bay development proposals: Colac Otway shire, in conjunction with DSE, has embarked on a planning exercise at the Apollo Bay harbour to modernise the boating facilities there. Since it is a coastal-dependent use there is no argument about the need to maintain Apollo Bay harbour as a safe port for a range of small craft. Apollo Bay is the only port of moderate size between Port Fairy and Queenscliff in the fairly treacherous waters of Bass Strait. The Victorian Coastal Strategy encourages the removal of non-coastal-dependent uses from the foreshore. It is partly this policy that has led to the proposal to relocate the golf course from its current location on the foreshore near the harbour and the developers' subsequent plans to piggyback 500-plus residential dwellings along with the relocation on the Barham River flood plain. I refer you to the Victorian coastal strategy. Is it something that the committee has been aware of?

**The CHAIR** — Yes.

**Mr LONGMORE** — It has a hierarchy of principles, the first being to 'Protect significant environmental and cultural features'; the second, 'Give clear direction for the future'; the third, 'Sustainable use of natural coastal resources'; and the fourth, 'Suitable development on the coast'. Under 'Suitable development on the coast' it says that 'on coastal Crown land it will generally be coastal dependent or closely related to coastal-dependent uses' that will be considered suitable. At page 21 of this new draft, which is out for public comment at the moment, it says under the heading 'Coastal dependent uses':

These uses, and their associated infrastructure, include boat ramps, surf clubs, yacht clubs, boathouses, ports and harbours. They give people access to the coast and should reflect safety, recreation and industry needs. These uses are not needed at all locations along the coast and some uses may be better located inland.

I refer that to you. It goes on with several points: that open space not be limited, that uses should complement and not compete with surrounding uses, that land should be maintained well and structures should not block sight lines, and so on and so forth.

The potential freeing up of the land on the foreshore adjacent to the harbour, with the removal of the golf course, appears to have allowed DSE, or government ministers behind it, and Colac Otway shire to begin speculating about what uses they can put the land to there. An Apollo Bay harbour master plan planning process has been around for a number of years now. There have been some steering committee and reference group types of gatherings where the local people on those groups have strongly and persistently put the view that the local community does not want to see the foreshore used for large-scale commercial development.

Apollo Bay is confined by the ocean and the hills around it. It has very little public open space, and the Colac Otway shire has been remiss in not acquiring more public open space in a town that consumes a lot of planning attention and has seen a building and subdivision boom over the last 10 years. The amount of municipal parks and reserves in Apollo Bay for which the council is responsible is astoundingly small. Most of the public reserves are Crown land controlled by the Apollo Bay Kennett River Public Reserves Committee of Management and maintained by revenue generated from the caravan park on the Barham River flood plain. It is ironic that this source of revenue for maintenance of the foreshore will face a growing threat if residential development proceeds on the flood plain.

This imbalance in the amount of municipal public space and other public facilities as compared to what exists in the major town of Colac has long led to the perception by coastal residents that they are being treated as the cash cow

for the hinterland, farmer-dominated council. Proposals to hand over what little Crown land open space that still exists to high-spending tourists and for car parks and council offices only confirm that view. The shire has adequate offices already in a suitable location near its works depot in Nelson Street. It plans to sell those offices and get some free land on the foreshore — surely a naked land grab by any definition.

The physical structure of Apollo Bay is somewhat like an amphitheatre, with the civic and commercial centre on the landward side of the Great Ocean Road, where we are now, rising up to the hills and the foreshore providing a focus for the public experience of Apollo Bay at the foot of the amphitheatre. The harbour area towards Point Bunbury extends that experience out into Bass Strait, providing a vantage point from which to view the hills and coast towards Cape Patton to the north-east, with the same low-scale area, when viewed from further away, giving Apollo Bay its unique appearance and appeal. You would have seen that if you drove down the Great Ocean Road. From a landscape point of view it is important to preserve the character of the landscape by maintaining a strong open space element around the harbour and Point Bunbury.

In terms of the scarcity of land available for the public to easily experience Apollo Bay as a traditional coastal settlement it is even more important that bulky and exclusive non-coastal-dependent commercial uses be excluded from this precious part of the town. Commercial interests, by definition, control space to make a profit. To access that space, the public must conform to rules set by the commercial operator, and they will also need to part with money to stay for any length of time. This use of space deprives the general public of what was formerly theirs to use.

The proposals by Colac Otway shire and DSE have persistently put forward a plan for a luxury hotel overlooking the harbour. The justification provided for this by the shire's economic development officer, Mike Barrow, in his submission to this committee was disappointing in that it failed to acknowledge the primacy of public open space in general, on the coast in particular and specifically in Apollo Bay. It reads as a justification for economic development on public land with no awareness of how hard won the existence of these parcels has been, as set out earlier.

Economic development proceeds almost everywhere by the efforts of individuals seeking to increase their wealth. A shire has a role in facilitating this, but it should be balanced by an equal, or greater, concern for the qualities and amenities of an area that make it attractive in the first instance. Municipal authorities are expected to be the guardians of public open space, not partners in its destruction. Apollo Bay has ample freehold land available for the construction of luxury hotels reasonably close to the ocean, if developers wish to pursue that.

One of the problems with knowing what the thinking is behind these proposals is that it is not clear who is promoting the ideas. There appears to be a tourism lobby with privileged access to government that has been involved in the development of what is called a nature-based tourism strategy that apparently recommends long-term leases of public land for 5-star luxury accommodation in some locations. You will see I have attached an article from the *Age* of yesterday which is probably the best indication I have so far of where that thinking is going with the government. You can read that if you like.

This nature-based land strategy refers to the failure to capitalise on high visitor numbers to national parks and assumes that because of that there is public support for commercial development of parks and Crown land because people go there to enjoy them. This looks like faulty logic. People surely go to parks and foreshores because nature exists in a relatively untouched form in places where they have not been excluded by commercial development — that is, development that has taken place elsewhere and where property laws do exclude them. This is the *raison d'être* of parks and public space: for no or little charge people can enjoy an experience of nature that is impossible where commercial and development rights have been created over land. It is even more important that this principle be supported on narrow coastal strips where public space is in short supply.

In conclusion, local communities like to have ready access to their favourite public open spaces nearby. This is a measure of their daily quality of life — for passive recreation, exercise, observing nature and a whole range of things. Local resentment certainly can grow if a remote government starts sending messages through its agents that it wants to use the locals' favourite spaces to 'capitalise on high-end tourism'. It 'consults' but apparently does not hear that the proposals are unwelcome, or it does not care. In what is now a largely secular society, the ability of people to organise and resist attacks on their public spaces, which they value highly, which they use often and which they can be prepared to passionately defend should not be dismissed lightly. History has shown that public land can be lost if it is not vigorously defended. I just make that point about the secular society. In deference to you,

the member for Western Victoria Region, I suppose you would have noticed that the most prominent building out on Point Bunbury is still the Catholic church, and we would like it to remain that way. Thank you for the opportunity to address the committee.

**The CHAIR** — Thank you for an interesting presentation that I think added something in terms of the historical development there, which we have not seen before. To just clarify in my own mind, my understanding is that you are not arguing against some development in public spaces on the coast.

**Mr LONGMORE** — No.

**The CHAIR** — You are suggesting that there have got to be protective processes and transparency?

**Mr LONGMORE** — That is more the point. Probably my main point in this is it is very hard to say who is planning this. The government has policies like this which you would say are a little bit inimical to the public space being taken over by this.

**The CHAIR** — That is the development that is under consideration here?

**Mr LONGMORE** — Mike will be talking later about this, but this is one of the — have you got larger copies of that, Mike?

**Mr Barrow** (from gallery) — I have provided them with an updated version of that, Neil. It is substantially the same and I am happy that you present it, for sure.

**Mr LONGMORE** — Consultants are working on it. The community is given the opportunity to provide feedback and it gives that feedback, yet there still seems to be a process where the inclusion of fairly bulky buildings and so on is seen as an essential part of it. It is probably one of these public-private partnership issues where government must think, ‘We are not going to finance development of this area; we have got to give it over to a private operator to afford it’. It is clear that that is fairly popular with governments of all sorts, to do it like that, but I am saying in local areas like that it is being done against the local community’s wishes.

**The CHAIR** — My second brief question is, do you think this development is consistent with the coastal strategy?

**Mr LONGMORE** — No, I do not. That is what I am saying. There is a large inconsistency — —

**The CHAIR** — I am just trying to get it very clear.

**Mr LONGMORE** — There is a large inconsistency between the quite highly respected Victorian Coastal Strategy and its principles, and what is occurring here, which seems to be in breach in some of those or at least pushing them or stretching them.

**Mr TEE** — Thank you very much for that presentation. As the Chair suggested, it is helpful to see the debate about public space in that historical context. As I sort of read through where we are with the process, my understanding is, if I can perhaps just outline how I think we got to where we are today, and a number of issues arise from that, it seems to be that we have the overarching central/state government coastal strategy and we have got a community and a council that is trying to grapple with the implementation of that. That grappling has involved a process that has now taken two years, where we have had, as I understand it, a steering committee or community consultation group, which I think you are part of, that has put out a draft plan, has put out a survey to get comments on that draft plan, and it is in part, I suspect, the draft plan which raises the warning lights as you see them. As I understand it, just continuing on with that narrative, the process then involves an opportunity for the community, including yourself, to make submissions on that draft plan before there will be a final plan at some stage.

Looking at it from a Melbourne perspective, I suppose I am grappling with the role that we as a committee play. I think we would be criticised if we came in from Melbourne and tried to override or intervene in a project which has been developed by the committee, and a project which has a vision for the committee which includes improved community access to the harbour and there is camping — if we get rid of the golf course, there is camping.

**Mr LONGMORE** — Yes.

**Mr TEE** — We have got a submission, I think, from the council which says that without that hotel, without that investment, there are opportunities lost for the community in terms of jobs and in terms of tourism. There are opportunities lost in terms of investment, and it is an important cog in that wheel. Clearly there has been a process. Clearly there are a number of competing tensions. I suppose I am grappling for our role to play. I am grappling for how it is that we ought to intervene in that.

**Mr LONGMORE** — Perhaps you do not have to intervene in the detail of all these things. I spoke to the chairman before we started, and it is clear that you are dealing with local issues all over Victoria, and you could not be expected to intervene in all of those. But I have tried to make my submission emphasise that there are some principles here that it would be good if this committee ends up endorsing, especially what is clearly set out in the Victorian Coastal Strategy. You probably know that, whether it be the Seal Rocks at Phillip Island or something like that, large commercial operations do not tend to be very popular developments. I think Victorians are very protective of their foreshore, and that is reflected in these sorts of documents, so to move to these sorts of proposals will not be popular. I think the committee would do a good job in just reinforcing that the principles in here are ones that are worth protecting. That is my opinion.

**Mr O'DONOHUE** — Thank you very much, again, for that historical context. I think you have summed it up well. The role of the committee is to hear from different groups that have a view on this issue, and we heard from a group yesterday that is actually wishing to acquire Crown land, so there are different perspectives. I think it is healthy for the community to hear those different perspectives, and from that we will hopefully be able to distil some recommendations, so again that historical context is welcome. From your viewpoint and your involvement with this project, who has been pushing this project? Is it the council or is it DSE?

**Mr LONGMORE** — I think it is a bit of both. To give you a little bit of background, you would be aware that the national parks were declared in the Otways, and then I think there has been an economic development push to encourage tourism of all sorts. The view has been around for a fair while that there is not a lot of 5-star accommodation available in the Otway area. There is what is called the Great Ocean Walk, which is an eight-day walk, and they would love to make some flash accommodation available for the wealthy tourists who could then go for walks and things like that. I am not opposed to that, it is just that, as I said in my submission, I do not think this is the appropriate place to build a luxury hotel, that is all.

I was up in Mildura on the weekend, and we are actually facing a disaster in northern Victoria in terms of tourism, water availability and everything else up there. There is going to be a lot more movement to the coast over the years. There will be a lot more people who want to live on the coast, just retiring or whatever, so public open space is going to be more and more important. There will be more and more people retiring here just wanting to fight for it. You can see — you are looking at it now — that that is all there is, and with climate change and sea-level rises, it could even disappear. We are facing really big issues here. That is another issue in itself — will a lot of this public open space actually be here in 100 years?

**Ms PENNICUIK** — Thank you, Neil. I am not sure how much you can speak on behalf of the community, but certainly I know you have been on the community reference group and you are a part of the Kennett River and Apollo Bay group, so you have been in touch with community views. Perhaps you could briefly outline what the community view would be about what would be appropriate at the harbour site.

**Mr LONGMORE** — Yes. I think some of these plans involve some sort of cafes and things along a boardwalk around the harbour and stuff like that, and I do not think there was very much objection to that. There is this swimming pool idea. Whether that is technically feasible is hard to say — there has been a bit of debate about that — but certainly there has been a big push for a swimming pool in Apollo Bay. Certainly those two elements are popular, and probably the community wants them. I do not think it wants any more building of solid buildings on the foreshore, though, and it seems that this is the trade-off that the shire and DSE are coming up with, saying, 'Well, if we're going to do all these things, you've got to have hotels and so on'. I think the cafes and things of that scale around the harbour are okay, generally.

**Ms PENNICUIK** — I think you are right. In your historical overview you were talking about the commons, and I think the Victorian public see public land as the commons, so it is the overcommercialisation of that that is the problem.

**Mr LONGMORE** — I think with the rest of the foreshore, the coastal strategy is very strict on that, and it has since tried to prevent development on coastal spaces, so it is not as if the whole foreshore is faceless commercial development. In areas like this there is a commercial focus, but just what is the right balance to ensure that the public still likes its area and feels that it is accessible? Luxury hotels are not accessible to most commoners, are they?

**Ms PENNICUIK** — By virtue of the fact that they lock out the public.

**Mr KAVANAGH** — What would you say is the community view about moving the golf course?

**Mr LONGMORE** — That is a big issue, Peter. You almost need a new parliamentary committee on that one, I think. The minister may have to deal with it soon anyway, but I think the community view is pretty split — as it is often split — into economic development and conservation. I think those with a pragmatic view think flood plains are not an appropriate place to put 500 houses. Moving the golf course from there is seen as probably a good thing. You might not be aware that the golf course has purchased land on the flood plain anyway, it is just that it could not afford to construct it, so that is how it got involved with the developer. The flood plain is a good place for a golf course. It is already zoned, so you hardly even need a planning permit to put a golf course there.

**Mr KAVANAGH** — And what do you think should be done with the golf course land?

**Mr LONGMORE** — I think these plans are quite good. As I mentioned earlier, the caravan park that currently exists and the recreation reserve are on the flood plain. Probably realistically we have got to say that in 100 years that will not be usable for camping at all. Perhaps there will need to be some camping put up on Point Bunbury — low-scale, seasonal camping. That is probably seen as good use. It is higher land and it keeps it open.

**Mr KAVANAGH** — Thank you.

**Mr THORNLEY** — I am only beginning to understand that there is a fair bit of controversy with the council on a range of these matters, particularly the flood plain development. But just from your perspective on the role of the council, there is a little bit in your submission about a farmer-dominated council treating this area as a cash cow. I am just wondering if you can outline a little bit more about the views of the community here, if you think it is at odds with its elected representatives in the local council?

**Mr LONGMORE** — That is also a little bit historical. Otway shire used to be just the Otways and Apollo Bay, and Colac was a different entity. Even then it was farmer dominated, but it was based around Colac and Winchelsea. That pattern has kind of been repeated along the coast. Corangamite shire is similar in that it has Port Campbell as a high-value tourism area, but it is run from Camperdown. Warrnambool is a bit different, but Moyne shire is certainly like that as well. I think you get different levels of development. The economics of coastal development are much different to what is occurring around in farming areas.

It is quite natural that wealthy people are buying land around here, and they can pay higher rates, so the shires see encouraging that sort of development as being good for their cash flows. It is quite natural that that is how it has occurred. But for those residents who are living here, they see that they do not get anywhere near the amount of facilities and resources. If you do drive back through Colac at any stage, you will see for yourself that there are parks that are maintained and mown and all that there, and it is happening all the time. There is none of that here. There is a big disparity like that, which is a cause of ongoing concern.

**Mr THORNLEY** — There is a heck of a swimming pool in Colac.

**Mr LONGMORE** — Yes.

**The CHAIR** — Thank you, Neil, for your evidence, which was very informative.

**Witness withdrew.**