

CORRECTED VERSION

SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Subcommittee

Melbourne — 3 April 2008

Members

Mr D. Davis

Mr B. Tee

Ms S. Pennicuik

Chair: Mr D. Davis

Staff

Secretary: Mr R. Willis

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Witnesses

Ms J. Bell, and

Mr T. Pikusa, Protectors of Public Land Victoria.

The CHAIR — I welcome again Julianne Bell and Tom Pikusa for a further contribution in a slightly broader capacity.

Mr PIKUSA — Thank you to the committee for allowing the group to make a submission to it. We would like to make a short submission on the Carlton Gardens. I circulated a copy of it this morning, and I wonder if the members of the committee have a copy of that?

The CHAIR — Yes, we have it.

Mr PIKUSA — The Royal Exhibition Building and the gardens were inscribed on the World Heritage List in July 2004. One of the things that happens after a place is inscribed on the list is that you have got to do a management plan for the site, and you have got to do a management plan for the area around the site. The reason you do those two things is to ensure that you can maintain the heritage character of the place according to the requirements of the international convention we have signed.

The body responsible for preparing that management plan at first instance is Heritage Victoria. Effectively what happens then is that the commonwealth reviews that report and pretty much rubber stamps it, unless they can see any particular problem with the plan. At this stage there has been a draft environs plan for the area around the gardens, which was released in about December last year and is going to a public hearing held by the Heritage Council later this month, I understand. But at this stage there has been no draft management plan for the gardens themselves and the building. Here we are about four years later, and there is not even a draft out yet.

Obviously the Protectors of Public Lands Victoria is concerned about the holding of major events like the flower and garden show in the gardens because of the potential impact that the event might have on the heritage character of the gardens. That includes causing physical damage to the gardens, including its significant trees. It is notable to remember that it was not only the exhibition building that was included on the World Heritage register but the gardens as well, because they were a contributing factor to the significance of the place. So there is a fairly high obligation to ensure that the management of the gardens is such that those trees, to the extent we can, are maintained and preserved to preserve the intactness of the place. I have been hearing a lot from the person sitting on my right for a number of years about the damage that is being caused by the flower and garden show to the gardens, and I have said we needed to get an independent report of some type to assess what impact it might be having on the trees in the gardens. Mr Galbraith has prepared a report, which I have attached to the submission.

The CHAIR — Thank you.

Mr PIKUSA — What he has done is looked at all the various reports that have been done on the part of the council, on the part of Heritage Victoria and on the part of the promoter over the years. He has looked at them and said, 'I think there are some issues that need to be addressed if something like the flower and garden show is going to stay in the gardens for the foreseeable future'. I am not going to take you specifically to the report. I will leave that for the committee to read, but amongst other things Mr Galbraith concluded that:

Overall I have little confidence in the claims the trees are not being negatively impacted by the MIFGS. Old historic trees, the most important element of these gardens, are sensitive to environmental change. Their roots extend well past their canopies and are close to the surface. They tolerate less of a proportion of root damage than younger —

ones —

Furthermore when they are under stress they tolerate less damage than when healthy. It is inconceivable to me that a hundred thousand-plus people wandering over the roots over a five day period every year does not have a cumulative adverse effect, particularly to old trees already blamed by CityWide as labouring under the debilitating effects of drought and possum browsing. Furthermore it is obvious the elms are suffering from elm leaf beetle predation. The adverse effects of compaction —

that is, of the soil —

can be insidious, slow to manifest themselves and tend to compound the impact of other adverse agents such as drought, pathogens, parasites, fungal decay etc. Trees are continuing to be removed, presumably due to poor condition, and trees are being treated for health stress. Despite this, they have only been given tree protection zones (TPZs) of up to 4.5 m from the trunks, irrespective of tree size and age. This dumbfounds me. On top of all this the grounds have been subjected to irrigation this year and have received substantial recent rainfall, thereby predisposing the trees to a much higher risk of further soil compaction — as forewarned in the de Graaf report.

What all that means is — and this is something I did not quite appreciate — that you see these extraordinarily large trees in the Carlton Gardens and you think that people just wandering around the surface near their base cannot

have any particular effect on them. According to Mr Galbraith, the most sensitive part of trees, even of the very large trees in the gardens, is within the top 30 to 50 centimetres of the soil. When the soil is dry, as it has been over the last couple of years, it is pretty hard to compress it down and therefore affect potentially the roots that take moisture and nutrients out of the soil. He says when it is wet, though, as it has been and as it will be this weekend, the potential to compress the soil and therefore affect those root is pretty substantial.

I suppose the obvious response is to say, 'Okay, what you do then is you just ensure that you do not have anyone walking around the base of these big trees or any of these large stalls there'. I suppose that might be one answer to the whole thing, but I suppose you could take it back a step and say, 'There is a very large commercial event that is being held in these gardens for a period of a week or so every year. It looks fantastic in the gardens, but is it really appropriate that an event of that nature with potentially that impact be held there in circumstances when the gardens are on the World Heritage List — and that is the highest level of cover you can get — and there is not even a management plan in place to say what is being done there at the moment is okay?'. I think it is interesting that this year the council has decided to no longer support the holding of the flower and garden show in the gardens.

Mr TEE — Although I think they now say it is part of a negotiating strategy.

Mr PIKUSA — I am not placing too much reliance upon that, but I suppose one effect of that announcement by the council is that it has encouraged the state government to introduce amendments to the Crown Land (Reserves) Act. Those amendments are premised on declarations being made for a period of up to three years to enable events of state significance to occur in the Carlton Gardens. The event of state significance at this stage is the Melbourne International Flower and Garden Show. What that means is that during the period of the declaration, when the event manager can set up, hold the event and then decommission everything that is there, the council's planning powers and those in its capacity as committee of management for the land are suspended. To some extent the powers of Heritage Victoria are suspended as well although it seems as though Heritage Victoria is going to be issuing permits for the activity even though there are going to be these declarations in place.

Effectively what could be happening as a result of these proposed changes is that the promoter is going to be responsible for ensuring that it does not cause any damage to the Carlton Gardens but there is not really going to be any independent oversight of that other than, I suppose, potentially through Heritage Victoria. You have to wonder how that really fits within a legal framework at the top of which is the commonwealth legislation and the involvement of the commonwealth minister, and the requirement that there be a management plan there. The problem the group has with the proposed arrangement is effectively the promoter is going to be the entity responsible for doing the monitoring of the impact of the activity in the gardens, but the promoter has a conflict of interest because it is the entity causing the impact in the first place, if there is any. That hardly seems to be an appropriate response.

Ms PENNICUIK — It is an often-used one, though.

Mr PIKUSA — One of the things about the commonwealth legislation is that there is a sort of an arrangement with the states and the commonwealth which says for day-to-day management of commonwealth —

The CHAIR — This is the commonwealth heritage legislation?

Mr PIKUSA — That is right. It is not specifically under that legislation but it is through contractual arrangements between the commonwealth and the states and that legislation. The day-to-day management of sites such as the Carlton Gardens is to be done by Heritage Victoria, and then on an as-needs basis; or if the minister needs to get involved, that is when he does.

One way you can get the minister involved is to refer the activity to the commonwealth minister to have him consider whether or not there are appropriate measures in place to ensure that the garden show does not impact on the gardens. If so, then there is no problem. That is not even being done in this case. There is no real sign-off by the commonwealth minister on this activity at the moment and there needs to be; there is no management plan for that site, given that it is a world heritage place and there needs to be; and the state government through the various machinations in the Crown Land (Reserves) Act is effectively allowing the promoter to sign off on its own reports about the impact it is causing to the gardens. From the group's perspective that is really not a very appropriate state of affairs to be in, particularly when the gardens are different to every other bit of public land that you may well be considering because they are covered by commonwealth legislation.

Under the World Heritage Convention, article 11.4 refers to ‘serious and specific dangers’; dangers caused by ‘accelerated deterioration’ or ‘large-scale public or private projects’, and ‘destruction caused by changes in the use of the land’. They are the kinds of impacts that need to be avoided on land such as the gardens here. They are obviously expressed in pretty broad language but they are the kinds of things that potentially are being caused by the ongoing holding of that particular event in the gardens, and they need to be managed a bit better than they are. At the very least there needs to be some more scrutiny in a public sense of what is going on there.

The group’s preference is that there is no event such as the flower and garden show held in the gardens but if there is, it should be held up to greater scrutiny so that we can maintain those gardens in the condition they are in for the next 150 years. In the meantime, given the current way things are going on there, the current arrangements need to be seriously questioned.

The CHAIR — Tom, I thank you and Julianne for this further presentation on Carlton Gardens. My question relates in part to the monitoring process and Heritage Victoria’s role in that. Do you believe Heritage Victoria is sufficiently independent of government to make decisions that may on occasion be uncomfortable for government, and do you have confidence in Heritage Victoria as it is currently operating to manage its obligation under this and perhaps some other areas as well?

Mr PIKUSA — I think there certainly is a fair political element in Heritage Victoria but that is my own view. That may flavour how they deal with issues such as the management of the garden show in the gardens. The other aspect to it is that when it gets down to the management of trees it is different to a lot of other places that they have to manage, which are buildings, structures and the like, and I wonder whether they have the expertise to know whether the reports that are being prepared by promoters are in fact what is required to ensure that long-term damage is not being done. Do you have anything to add about Heritage Victoria?

Ms BELL — Just to say that it was, as Tom has pointed out, in July 2004 that the Carlton Gardens and the exhibition building were inscribed on the World Heritage register, and they were always promising they were going to have a management plan for that site as required by the commonwealth but have failed to do so. It was only just in December that they have drawn up a draft strategy plan. They advertised it just before Christmas and allowed us very little time to make our submission.

Mr PIKUSA — I would imagine that one of the reasons why there is no management plan for the gardens itself at this stage is that it would recommend that events such as the flower and garden show were not held there

The CHAIR — I come back to my earlier question. I take it from what you said earlier that you do not think Heritage Victoria is sufficiently independent and that you perhaps do not have that confidence that they will make an independent decision — independent of government, that is.

Mr PIKUSA — I do not know for sure, but I have a suspicion that might be right.

Mr TEE — It seems that we have got expert opinions on all sides. I was handed the soil compaction assessment for the City of Melbourne which concluded that soil compaction in the Carlton Gardens poses no threat to the existing trees vegetation. And then obviously you have just provided us with another report which makes some other conclusions. I am wondering whether the way through is, as suggested in your report, which I think is by, Galbraith?

Mr PIKUSA — It is.

Mr TEE — Because it seems to me, after the bit that you have read out, that it talks about the use of mulch, and talks about a study that was done in 1994 which:

... concluded that a layer of 15 centimetres of organic mulch over the soil surface was very effective in preventing compaction ...

Mulch as chippings from live tree branches is quite adequate in my opinion. A 15 centimetre of mulch extending well beyond the drip lines over the existing turfed areas would almost certainly ensure compaction problems to the trees would not be an issue during the MIFGS. It is a relatively simple task to implement in the overall context of the show.

I am wondering, and I have not read the report in its entirety — I have just read the following part after the extract which you had completed — but I am wondering if you and your group maybe see that as a way forward to ensure that the compaction does not harm the trees?

Mr PIKUSA — On a micro level I think it is hard to argue with what Mr Galbraith says there in respect of the compaction and mulching of the trees, and certainly whatever recommendations he makes should be done. The impact on the size of land available for the flower and garden show as a result of his recommendations to hold the event there is something that is different again. Yes, any recommendations that Mr Galbraith makes, I would support and the group would support. The group has a philosophical problem with the holding of the flower and garden show in the gardens, and that relates to the bigger issue of there needing to be proper management of the gardens as a whole because of the commonwealth requirements for the land, and that really is something that needs to be done.

The proposed amendments to the Crown Land (Reserves) Act and the making of declarations because it is an event of state significant I think is an inappropriate method to be used to allow the continued operation of the flower and garden show in the gardens in the absence of a proper management plan that is one that is required under the commonwealth legislation. If that management plan is done and it says, 'You can hold an event like this in the gardens', there is not much I could say to you that would be reasonable to say that that event should not be held there for that period of time. I know Ms Bell has a philosophical objection to the garden show being held there because it is just too intense an activity in her view, but from the perspective of the group any kind of management plan or recommendations from Mr Galbraith that are adopted for its ongoing management I think are very welcome. So there are the two aspects to it: the micro stuff that Mr Galbraith says, and the macro stuff which is the ongoing management.

Ms BELL — May I make a comment to follow on from that? There is a question of whether it is appropriate to hold an event with such a huge number of people in the gardens. There is a public health and safety issue. Rob Galbraith's report under 'The trees — general' in the second paragraph points to many of the trees having limb shed and storm damage history, particularly the elms. If we go over to his comments on the report by CityWide and R. W. Small, who I see was quoted in the debate on the Crown Land (Reserves) Amendment (Carlton Gardens) Bill, he says about the report by CityWide:

The trees are generally in good condition. Given the limb shed history of some of them, and health stress in others, I am not so sure. I note that weight reduction pruning was not listed as an option to reduce the hazard of limb failure in the list of proposed maintenance activities. This seems strange to me, particularly when so many people use the grounds. If a tree sheds a branch the risk of someone being clobbered is substantially higher if there are over 100 000 people in the vicinity. There are certainly hazard trees which need selective branch and weight reduction pruning.

Margaret O'Brien informed him that when walking in the gardens limb shed is a common occurrence. Forty-eight trees were identified in the report as being debilitating, and so on. So there are stressed trees in the gardens, and this was written with a bit of foresight because it was written before yesterday when a branch fell down and injured somebody in the gardens, and the gardens had to be closed because of the storm. Now it may be said to be every 100 years, or whatever, but it still could perhaps point up that on a densely treed site it may be inappropriate for such a huge event.

Mr TEE — I think my recollection — and I might have to check — from Mr Adams is that the City of Melbourne is very aware of its obligations to trim limbs to ensure that circumstances such as yesterday are minimised. I think he spoke almost with pride about the limited damage that had occurred because of their pruning regime in the gardens.

Ms PENNICUIK — We are talking a lot about the actual effects of having the MIFGS in the gardens, and I appreciate what you say, Julianne, about the health and safety aspects. With the result of 10 years of drought and stressed trees, obviously their ability to withstand a storm like that is lessened, and I would say it remains lessened. Yesterday's event will not be the end of the story there. There is an old Burmese saying: never trust a ruler or a bough of a tree. We are talking about compacting land, and I think part of it too is the actual time in which that is happening. If you refer to the report that Mr Tee keeps referring to, and Mr Adams telling us that we are already in the higher range of that compacting, then if you really wanted to compact the land in the southern gardens, what you would do is to get 100 000 people to walk over it for five days and that would truly compact it. We have to consider things in their place, but we keep going around and around all that. I know, Tom, that you are saying Julianne has a philosophical objection to holding the event there because it is a heritage site. I think it is not just a philosophical objection that you can have; it is just an objection in fact, would you not agree, that under the world heritage listing the site needs to be maintained as it is?

Ms BELL — Yes.

Mr PIKUSA — Yes.

Ms PENNICUIK — I quoted 7.1 and 7.2 before, but if you look at article 8 it says:

Conservation requires the retention of an appropriate visual setting and other relationships that contribute to the cultural significance of the place.

New construction, demolition, intrusions and other changes which would adversely affect the setting or relationships are not appropriate.

Would you not agree that it even goes beyond a philosophical objection, and that under the Burra principles, which refer to how you look after world heritage sites, it is actually a factual objection? You cannot hold an event like that in those gardens because of the principles that govern world heritage sites. Am I not right on that?

Ms BELL — Yes, exactly.

Mr PIKUSA — Yes. That may well be why there is no management plan.

Ms PENNICUIK — Indeed. We have had some discussion about Heritage Victoria. Perhaps the problem is that when the federal government refers the management of a site to a state agency, which is attached to a state government which has the desire of holding an event, then you end up with a conflict of interest or a compromised position.

Mr PIKUSA — Yes.

Ms PENNICUIK — Are you aware of whether the federal department has made any representations to Heritage Victoria to ask them to get a wriggle on?

Mr PIKUSA — Not that I am aware. We alerted Mr Ian Campbell, who was then the environment minister, in 2006 about the impact of the flower and garden show and the absence of a management plan, and had a response back to the effect that Heritage Victoria was dealing with this. He seemed satisfied with that response. We are not aware of what the current environment minister's view would be on that activity.

Ms PENNICUIK — You have not written to him?

Mr PIKUSA — We have, and no response.

Ms PENNICUIK — Could you provide the committee with all that correspondence?

Mr PIKUSA — Yes.

Ms PENNICUIK — Thank you.

The CHAIR — Thank you both for your patience through the day, and for your contributions.

Witnesses withdrew.