CARDINIA RATEPAYERS & RESIDENTS ASSOCIATION

ACN: A0045097F

SUBMISSION

TO

INQUIRY INTO THE SALE AND DEVELOPMENT OF

PUBLIC LAND AND OPEN SPACE

BY

CARDINIA RESIDENTS AND RATEPAYERS ASSOCIATION

SEPTEMBER 2007

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THE SALE AND DEVELOPMENT OF PUBLIC LAND AND OPEN SPACE

EXECUTIVE SUMMARY

This submission by the Cardinia Ratepayers & Residents Association (CRRA) relates to public land owned by local councils.

CRRA has taken the liberty to use the term 'disposal' of land to describe the passing of land from council public ownership to private ownership. We submit that when considering the disposal of public land the primary determining factor should be the manner in which the local council acquired the land in the first instance.

For example land acquired -
- By gift or bequest
- As condition for permitting development
- Through compulsory acquisition
- From general revenue or borrowings

Based on the intent that was underlying the particular manner in which public land was acquired, CRRA proposes a set of 'rules' relating to the ability and conditions pertaining to the disposal of the land. Whilst the 'rules' still permit the disposal of public land in some circumstances they place inhibitors and disincentives on councils to do so.

CRRA strongly object to councils acquiring land to be used for development or speculation either as a sole proprietor or in some form of joint venture.

CRRA explains why we believe that such a commercial venture by council is both unethical and an unwise risk and inappropriate use of public funds.

CRRA submits for consideration a definition of what should be classified as public open space and what should be excluded. We do this because of concerns that council and developers are claiming areas as public open space that are in our view not accessible to the public and may present a safety risk particularly to children,

A major point of our submission is the concern with the sale of public open space in the urban areas. We worry about the impact that this will have on our social environment and the continual replacement of natural physical environment. We explain why we have these concerns.

CRRA submits a proposal on how we believe public open space can adequately be preserved from disposal for development or any other purpose. It involves an incentive to generate and keep public open space and implement tighter rules to prevent its disposal.

And finally CRRA proposes a revamped single body to review decisions and hear appeals by aggrieved parties.

Gloria O'Connor
President
Cardinia Ratepayers & Residents Association

INTRODUCTION

A substantial portion of public land, particularly public open space is under the control of local councils.

Local councils are entities who owe their existence to the State Government's Local Government Act.

CRRA believes therefore that any inquiry into the sale and development of public land and in particular public open space must take into consideration that public land administered by local councils.

Our submission pertains to land owned by or controlled by local councils.

There are some guidelines and controls in place under State legislation relating to local councils' dealing with land but CRRA is submitting that these need to be enhanced to incorporate the issues we raise in our submission.

At this point CRRA would request the Committee to clarify for this inquiry in the terms of reference the definition of 'sale or alienation of land' to include the gifting and the exchanging of land.

There have been examples where a council exchanged public land for another parcel of land, in which the council became a joint venture developer.

CRRA has taken the liberty to use the term 'disposal' of land to describe the passing of land from council public ownership to private ownership.

Our argument is that there are situations where the sale of public land, for whatever future use, may be allowed and other cases where the sale of public land regardless of intended future use should be restricted by the State.

DISPOSAL OF PUBLIC LAND REGULATED BY THE MANNER IN WHICH IT WAS ACQUIRED

CRRA submits that when considering the disposal of public land, particularly public open space, the primary determining factor should be the manner in which the local council acquired the land in the first instance.

The second factor should be the purpose for which it was initially acquired and the history of its use.

1. Land acquired by gift or bequest.

In such instances, councils must have certainty from the donor as to the donor's intention as to the purpose to which the land is to be used by the receiving council.

If the council is not in agreement with the donor's intended use, council should not accept the gifted land.

In most cases the gift or bequest is to and for the public with the council as an organization of perpetuity as the custodian. If council accepts the gifted land they also accept the intended use. The land should then be used for that purpose.

Council should not be able to dispose of any portion of that land while the intended use remains valid. (Unless the intended use included the on selling of the land in a short period, say 12 months, after the time of the gift).

If council for a reason wishes to dispose of land acquired in this manner they must test the validity of the recently arisen reason(s) for disposal against the original gifted or bequest intention by a plebiscite of all ratepayers to gain a 60% approval for the disposal. 60% is a good reflection of public opinion and may reduce the likelihood of costly appeals and in the case of appeals sends a clear message to appeals jurisdiction.

This approach -

(1) Makes acceptance by council a considered decision
(2) Gives a degree of certainty to the donor and the public
(3) Places a significant inhibitor on the disposal of public land acquired in this manner without outright prohibition, and
(4) Permits sale provided council is able to justify the reasons to the majority of ratepayers

For example –

I. Pakenham Golf Course Land
II. Pepi's Land in Emerald

See appendix I

2. Land acquired as condition for permitting development.

Any land acquired by a developer has been done so at a cost to the developer.

As part of the process of obtaining approval for development, the developer is often required to contribute a portion of land for parks, open space, recreational purposes etc or cash of equivalent value to the local council.

Common business sense tells us that the developer will recoup the costs by adding to the price of the developed lots sold i.e. the 'new' owners of the land in the developer's estate have paid for the public land or contributed to the cash equivalent.

CRRA has no argument with this as the 'new' owners are the ones in closest proximity to the public land and are collectively the ones most likely to get the maximum benefits from the facility although the facility would also be available for any member of the public to use.

In fact CRRA strongly supports councils increasing developers' contributions as one highly preferred source of funding for the acquisition of council provided infrastructure in developing areas.

Over time as lots in the estate are sold and resold, the price paid by the 'latest' owner will still contain a passed-on element of the price paid for the public land.

It may have been the attraction of the park etc. that was a contributing enticement for the 'new' owners to purchase in the particular estate.

What appears to becoming common practice in some local government authorities is that the cash contribution/s appear to be going into general revenue with no accountability back to the 'new' owners in estates or to ratepayers generally.

That is there is no substantiated or transparent evidence that this cash is being put to the purpose for which it was collected.

What is becoming a common practice is that council is selling the smaller parks that were developer contributed and the proceeds are also going into general revenue.

Does this practice lend itself to the assertion and public belief that this scheme is bordering on 'fraudulent misappropriation' of ratepayers' funds?

CRRA strongly objects to this practice as being totally inequitable, both the process of disposal and in the distribution of the proceeds of the sale.

Unless there is a high profile resident or the backing of a body such as the union or Ratepayers Association etc, objections are given scant regard.

Appeal 'rights' are becoming increasingly difficult to access in time, cost and legal expertise.

Why is this practice inequitable? Let us look at some scenarios.

> *You purchase a property that is sewered. The previous owner paid for the sewerage when the estate was developed. The sewerage is 'removed'. What is the value of your property now?*
>
> *You purchase a property with water connected. The previous owner paid for the water connection. The water is disconnected never to be replaced. What is the value of your property now?*
>
> *You purchase a property on a made road. The previous owner fully paid the levy to have the road made. The road is available for the public to use. For whatever reason the road is returned to a dirt road, what is the value of your property now?*

Although CRRA has used some license in these scenarios, they do make the point that a facility that you paid for, and wanted, has been removed, the value of your property has declined and you would be up in arms seeking compensation.

Is it any different if a park etc which you paid for through a developer contribution is removed?

CRRA argues that it is not any different.

3. Land acquired by developer contribution of land.

If a council is of the opinion that a parcel of this type of land should be disposed of, council should give to the 'latest' owners of lots in the estate from which the land was contributed the recently arisen reason(s) for disposal against the present use of the land and a choice by plebiscite to –

(1) Sell the land, or

(2) Transfer the land to a Body Corporate structure owned equally by all the 'latest' owners of lots in the estate.

If the decision is to sell (60%), the sale proceeds after selling expenses should be returned by equal amounts to each of the 'latest' owners of lots in the estate.

The council thereby saves annual maintenance expenses.

If the decision is made to transfer to a Body Corporate structure, the land would be a private park and rated as such (no longer public open space, see below), the residents would be the joint owners liable for all maintenance and ongoing costs including insurance.

4. Land acquired by developer cash contribution.

Cash obtained in this manner should be placed in a 'trust' account for the acquisition or a contribution towards the acquisition of public land.

The current status of this 'trust' account should be reported in the Annual Financial Statements with explanatory notes for each transaction against that account.

If the cash is not used to acquire public land within say 5 years, it should be returned to the 'latest' owners of lots in the estate from which it was derived.

When land is purchased with this contribution cash, the percentage contributed by each estate should be recorded.

If a council is of the opinion that a parcel of this type of land should be disposed of, council should give to the 'latest' owners of lots in the estate from which the cash was contributed the recently arisen reason(s) for disposal against the present use of the land and a plebiscite to gain a 60% approval for the disposal.

If the decision is to sell, the sale proceeds after selling expenses should be returned by equal amounts to each of the 'latest' owners of lots in the estate in the same ratio as the cash contributions were made.

By this process relating to public land acquired by developer cash or contribution –

(1) Those that contributed most to the land make the decision on sale,

(2) Those that contributed most to the land receive the sale proceeds,

(3) Council receives no capital return unless they contributed funds to the purchase; council will save on maintenance,

(4) Not a great incentive for council to initiate sale of public land

5. Land acquired through compulsory acquisition.

This procedure should only be applied to acquire land for public use, such as construction of infrastructure e.g. new or widening of a roadway or the expansion of an existing public facility e.g. sports ovals or parks.

Any land acquired by this method which is surplus to the primary intention (may have to acquire a title or holding larger than needed) should be either –

(1) Disposed of by open public tender with all offers being made public, or

(2) Utilized as landscaped public open space (if appropriate)

Other than the surplus above, land acquired by compulsory acquisition should not be disposed of for at least 20 years after being compulsorily acquired by council.

In this situation, the sale should be open and transparent with all potential purchasers given notification and opportunity to bid though private sale, auction or public tender process with all offers that are being made are done so in an open and transparent manner.

Councils should not be permitted to acquire land for commercial ventures or to expedite a commercial venture that is not totally owned and controlled by council.

Although this is not a practice that should be encouraged, there may occasionally be some justification.

However, CRRA believes that councils should not be permitted to acquire land for commercial ventures or to expedite a commercial venture that will pass into the control of private/corporate enterprise and/or private ownership. E.g. For the establishment of a supermarket or a post office.

CRRA believes that compulsory acquisition can be extremely stressful on the existing landowners. It is accepted that this imposition on the few may result on significant benefits to the majority with the provision of a new or enhanced public facility.

However CRRA strongly opposes the use of compulsory acquisition by council's to benefit private or commercial interests.

CRRA is of the view that the process we have outlined above will minimize this practice.

6. Land acquired though purchase from general revenue or borrowings.

6.1 Public use

Council is elected to make local government decisions.

These include the acquisition and disposal of public land. We have argued that where the source of funds or land is obtained for a particular purpose or use from an identifiable group in the community, then consideration of that community source and intention is paramount in disposal decisions.

Council has the responsibility to allocate amongst competing demands the proposed expenditure from general revenue. This includes capital expenditure to acquire public land for a range of worthwhile purposes. Council also has the capacity to borrow for such purchases.

Various factors alter over time including the demographic mix and community expectations making the retention of council public land no longer in the best interests of the electing community.

Council would then have a responsibility to dispose of that public land. This public land was funded by each and every ratepayer's contributions over set periods.

To test the public opinion of each decision of this type would be both time consuming and expensive on ratepayers and really goes against the principal of election of council to govern locally for the elected term.

CRRA would be supportive of council selling public land acquired in this manner which they decide is no longer in the best interests of the community to retain provided that –

(1) There is a right of appeal by parties that feel aggrieved by the decision to sell, (see below)

(2) That the social environmental impact targets for public open spaces are maintained (see below),

(3) That the sale is open and transparent with all potential purchasers given notification and opportunity to bid though private sale, auction or public tender process,

(4) That future use complies with planning and permit conditions (including development) consistent with those applicable to adjacent locations,

(5) There is a complaints avenue for the public to the Minister for Local Government for instances where due process is alleged not followed with possible remedies including council dismissal.

It is often said that the ultimate test of the ratepayers' approval is determined at the next election.

As a generalization this is a fallacy when it comes to a particular decision to dispose of public land.

There are so many other issues that have varying voter priority that the past decision for the disposal of say one parcel of land is 'smothered'.

It is for that reason that we argue that many of the other checks and balances we have submitted need to be in place to ensure ratepayers best interests are continuously being met by local government.

6.2 Council administrative use

Such land would include a Council Works Depot or Council Offices etc. as distinguished from land for public use.

Based on the same arguments as above, CRRA would be supportive of council selling public land acquired in this manner for these purposes which they decide is no longer in the best interests of the community to retain provided that –

(1) There is a right of appeal by parties that feel aggrieved by the decision to sell,

(2) That the sale is open and transparent with all potential purchasers given notification and opportunity to bid though private sale, auction or public tender process with all offers being made public,

(3) That future use complies with planning and permit conditions (including development) consistent with those applicable to adjacent locations,

(4) There is a complaints avenue for the public to the Minister for Local Government for instances where due process is alleged not followed with possible remedies including council dismissal.

OBJECTION TO LAND ACQUIRED BY COUNCIL FOR DEVELOPMENT OR SPECULATION

CRRA strongly objects to councils acquiring land to be used for development or speculation either as a sole proprietor or in some form of joint venture.

Our objection is based on the view that such a commercial venture by council is both unethical and an unwise risk and inappropriate use of public funds.

- Council is the local planning authority. If they are also the developer (or in a venture with a developer) then there is a definite conflict of interest in both the application of and the granting any planning and building permits and associated procedures and terms.

- The Charter and objectives, and particularly the expertise of council are not that of a land speculator or developer. Private enterprise is better equipped with the expertise, experience and aversion to risk in development than council.

- If council is a developer, (or in a venture with a developer) there will be a tendency either consciously or sub consciously to expend ratepayers funds on infrastructure and facilities that make their development more attractive to prospective purchasers. The unanswered question is whether that particular expenditure would have been committed if the council were not involved in the development project?

HOW DOES CRRA DEFINE PUBLIC OPEN SPACE

Open public space can be defined as tracts of land –

- not covered by non vegetable material,
- owned by a government or public authority,
- on which the public is permitted to, and can access uninhibited as a pedestrian at no charge to them,
- Where they are able to undertake any leisure, passive or active recreational activity, as either an individual and or with a group of like minded individuals, provided they comply with any rules for the consideration and benefit of others laid down by the land controlling authority.

Land which is enclosed for the running of a particular event(s) and or entry charges may apply for the event(s) but at times outside the running of the event(s) the land complies with the above definition, provided the event(s) do not on a 12 month period occur on average more than 5 times each month, would still be considered public open space.

The above is intended to permit the use of public open space for such events as local football and cricket matches, Grand Prix, Moomba, entertainment at Myer Music Bowl, car parking e.g. MCG surrounds, etc.

Land which complies with the above definitions, except that it is sealed for a specific recreational purpose, would also be considered public open space.

This is intended to include such land as walking/running tracks/trails, bike trails (other than those adjacent to or part of a roadway), skate parks, tennis courts, city squares etc.

Land through which public access is permitted on designated 'tracks' but barriers may prevent access outside the 'tracks' for revegetation or conservation purposes should also be considered public open space.

Examples could include beach, forest and swamp areas.

What land would not be considered public open space?

- Privately owned land: because the private owner may place restrictions or deny access.

- Public owned land where public access is restricted prohibited or excluded by barriers.

  E.g. Such as Defence areas, railway lines and surrounds, areas where the public safety is at risk e.g. subject to rock fall etc.

- Sealed or graveled areas.

E.g. Such as a carpark, whose purpose of use is to park car; roads, including the regulatory verges. If however the regulatory verge was to be exceeded and this additional area were to be landscaped for passive recreational purposes the additional area could be considered public open space.

- Waterways and lakes.

  E.g. these include rivers, streams and creeks, either perennial or non-perennial, and include the regulatory space each side of high-water mark. Further includes drains, lakes either natural or artificial, these areas are not safely accessible to the public although their features may be admired from a safe distance, as they are particularly dangerous for children and very risky at times of high water mark.

  If however the distance each side of the high water mark exceeds the regulatory requirement and that area has been landscaped for recreational purposed then it should be included as public open space.

  Further examples to be included would be accessible walking tracks or bike paths along a creek, or the landscaped BBQ areas along the Yarra River and landscaped surrounds of a lake.

WHY IS CRRA CONCERNED WITH THE SALE OF PUBLIC OPEN SPACE?

CRRA's major concern is with the sale of public open space in the urban areas.

This includes those urban zones in those councils and shires the State government has declared to be Metropolitan and those pockets surrounding small towns in the Green Wedge that have been declared urban.

Why is CRRA concerned with the sale of public open space?

Why does CRRA believe public open space is vital in urban areas?

We have Melbourne 2030 with the Green Wedge providing 'the lungs' of Victoria. Melbourne 2030 has a number of objectives associated with the Green Wedge, many related to availability of open space; the preservation of the physical and social environment; the natural and endangered species; air and water quality; and the reduction of greenhouse effect. There are also social environmental aims such as providing open spaces for the wellbeing of all urban dwellers.

It is the reduction of public open space (and the lack of planning for it and the actual provision of it) in urban areas and the impact that this does and will have on our social environment that is of concern to CRRA. And the continual replacement of natural physical environment with a man-made artificial environment will also impact on our social environment.

Land is not replaceable. And, as a general rule, neither is public open space. Once the land is in private ownership and developed it is rare for it to be returned to public open space. (*The City Square may be case where this occurred.*)

Where can kids go after school, to run around and harmlessly let of steam, kick the footy, play cricket with their mates, chuck a ball or do wheelies on their bikes? Where can the kids go without being chauffeured by a parent in a motor vehicle?

With the high-density living being encouraged in urban areas, where can adults go for their walk, run or to just sit on a fair dinkum piece of grass, read a book in the real sun light without them starting the car engine.

If we are genuinely concerned with traffic congestion and pollution from motor vehicles why are we encouraging it by placing public open spaces in locations that require a motor vehicle to gain access?

The Green Wedge is about 80 km from the centre of Melbourne. Public transport to these areas is either non-existent or expensive and the level of service where it does exist is significantly inadequate.

CRRA remains convinced that the provision and location of public open space will make a worthwhile contribution to reducing some of the identified problems. Because of this view, as a general principal, CRRA is opposed to the disposal by councils and other public bodies of public open space.

HOW DO WE ENSURE THAT ADEQUATE PUBLIC OPEN SPACE IS PRESERVED?

The Green Wedge is too removed from most urban residences to provide regular social environmental benefits. For many it is almost like going on an annual vacation to visit the Green Wedge. We need public open space interspersed with our urban residences for easy access.

An objective of CRRA would be to have a public open space within, say a 20-minute walk of the entrance to all residential dwellings. And furthermore that the size of the public open space area should bear a direct relationship to the population numbers planned or already resident in the location.

CRRA are of the view that some of the controversy associated with the provision and disposal of public open space, and the time and cost associated with panel hearings and appeals may be reduced if there was better State Government guideline for councils and incentives to meet those guidelines.

For example, a developer is asked to give either 8% of the estate to be developed as land to the council or the equivalent in cash. (We know that in some instances that the developers have made no contribution for the council to use). There is no audit to ensure that that land or cash remain as public land or public open space or that council applies the cash to this purpose.

We are well aware that there is a cost to maintain public open space.

We submit that what is needed is an incentive to generate and keep public open space and tighter rules to prevent their disposal.

May CRRA suggest that a target be established for the total area of public open space to be provided within the urban boundary of a council? This target could be related to the total urban area within a council's boundary, say 10%.

It is possible, as population density increases, there may need to be consideration given to a relationship between increasing population numbers and increasing public open space simultaneously.

Such targets should be part of Melbourne 2030. The concept would be to have 'mini' green wedged throughout the urban area within easy access from residences.

Then, based on some method established and determined by the State Government, a rate is set that reflects the average annual cost, say per hectare, of maintaining all public open space across all councils in Victoria.

Having established the target and rate, the State Government provides an annual maintenance grant based on each individual council's position in relation to their target. If a council meets its target it would receive a grant of say 80% of the computed maintenance costs, (the ratepayers must contribute some funding), if

they exceed the target by say 10% they receive a grant of 85%, exceed by 20% grant of 90%. On the other hand, if they fall 10% below target the grant is only 60%, 20% below, grant reduces to30 % and 30% below there is no grant.

With such guidelines in place and the annual incentive to meet or better the target, councils will be looking at a different economic equation than they have been applying. This ongoing annual dollar incentive may negate any one-off offer by a developer to sell public open space for development.

With the predominant portion of maintenance costs covered, council may well be financially better to retain public open space than dispose of it. And the community of today and tomorrow will enjoy a more positive impact on their social environment and their individual well being.

Under this proposal, CRRA would still see the 'rules' outlined earlier in this submission applying as a subset.

That is, beside council considering the financial results of disposing of land they have to determine and comply with a set of guidelines for disposal.

APPEALS SYSTEM

When setting 'rules' or guidelines we cannot foresee all situations that may arise in the future or the manner in which the 'rules' are interpreted or applied to provide an intended equitable outcome.

CRRA agree that in common sense and fairness there should be a 'court of review' or a process of appeal for any party that feels aggrieved by local government decision/s to dispose of public land.

The present systems of appealing disposal (or rezoning which results in disposing) of public land by VCAT or an 'independent' panel reporting to the Minister are seen as remote institutions removed from and out of touch with the people affected by their decisions.

Most people don't recognize VCAT as part of our independent judicial system and the 'independent' panel as a political process.

CRRA suggests there needs to be a revamped VCAT type system that, as with other legal matters, is independent of politics. The revamped body should incorporate the present role of the 'independent' panel.

CRRA would suggest that the presiding chairperson not necessarily be appointed from the legal profession but be a person with independence and wisdom in both legal and planning matters who is able to seek advice from experts in the field being appealed.

We would suggest that matters involving amounts of say $10,000 (to be aligned to Small Claims?) or say $15,000 (to be aligned to the Magistrates Court?) be heard by a presiding chairperson with no legal representation permitted by either party without both parties agreeing (to be aligned with Small Claims).

For matters involving financial amounts greater than that above, the concept of a jury system should be employed.

People have felt frustrated by the present process of decisions imposed by technical bureaucrats favoring those with access to knowledge and funding. Judgment by ones peers was a cornerstone of our legal system.

Injecting a jury system would introduce confidence and respect to VCAT planning decisions.

The 'onus of proof' would be that applicable to civil cases.

The revival of a system that allows ordinary people, guided by an expert in the field, to have significant input to decisions on issues of public interest is both democratic, equitable and the traditional basis of our legal system.

EPILOGUE/END STATEMENT

CRRA accept that we are not planning gurus.

Perhaps that is why what we have put forward makes common sense.

Our submission is based on a concept and we recognize further investigation and debate would be required before an operational system could be implemented.

However, CRRA feels strongly that the present processes are seriously letting down the community and individuals.

CRRA feel passionately that giant steps for improvement are needed and that the concepts in our submission will make a significant contribution to that improvement.

CRRA would be overjoyed and happy to see all the ideas and concepts we have put forward adopted and implemented as policy by one or all of the political parties represented in the committee of inquiry.

Gloria O'Connor
President
Cardinia Ratepayers & Residents Association

ATTACHMENTS

Appendix I

Examples of sale of public land -

- Pakenham Golf Course Land
- Pepi's land in Emerald

Appendix II

CRRA Statement of Purpose

Appendix I

Many valuable small local community parks and reserves in the bowl of courts and in various early subdivisions in Cardinia Shire have been sold off between 1998 and 2006 with the sale proceeds going into general council revenue and with no identifiable record of community benefit received.

However the two examples provided are major instances of the misappropriation of public land in Cardinia Shire.

Example I

Sale and/or alienation of Public Land – Pepi's Land

Pepi's Land (approximately 56 hectares) was owned and used by Mr. Pepi for growing potatoes. On advice of the then Victorian Ministry of Agriculture, apparently dieldrin (fungicide) was used to control disease in the potato crop.

Later when dieldrin was found to be dangerous, apparently the then Liberal State Government purchased Mr. Pepi's land as a goodwill gesture because his livelihood had been removed through now being forbidden to grow potatoes on a the contaminated land.

Subsequently, the State Government (under Planning Minister Rob McLellan) gave the land to the then Pakenham Shire in an exchange for two local community reserves in the Emerald district.

It was the expectation of the community that the land would be retained for public use as it replaced the reserves.

On 27th January 2004 (public holiday weekend) a Notice of Intention to Sell Land appeared in the local newspaper, calling for submissions on Council's proposal to sell Pepi's Land, submissions due within 14 days i.e. 10th February, 2004.

CRRA is of the opinion that many local residents concerned about the proposal to sell this public land would not have seen the notice because of its inappropriate timing.

On 8th February 2004, a resident observed a real estate notice on the land announcing the scheduled sale by auction of Lot 3 of Pepi's land for Saturday 13th March.

The notice, displayed prior to the closing date for submissions (10th February) did not allow time to process and hear submissions.

This could indicate the sale of the land had already been decided.

The concerned resident phoned the local councillor to ask why the auction notice had been displayed before the closing date of submissions. This resident phoned Cardinia Shire's Property Officer and the General Manager of Corporate Services.

On 11th February 2004 the resident noted the sign was still displayed and phoned the Cardinia Mayor. Later that day the resident noticed the sign was gone.

The resident presented a submission on 16th February 2004, knowing that the actual decision to sell the land (as evident by the saga of the sign) had already been made prior to 8th February 2004 when the auction sign was first displayed.

Lot 3 was subsequently auctioned on 29th May 2004 and a private residence has been built on that land.

It appears that another sale took place by private treaty, possibly in 2003/4, which consisted of several lots totalling approximately 34 hectares, but little public knowledge was available until the purchaser (a large plant nursery) actually took up occupancy of the land in question.

The remaining portion of the land has not been put to any recognizable community use or benefit. Local residents requested consultation with council concerning the two sales and the future of the remaining land.

In 2005, meetings were held, promises were made, no minutes were provided and no follow up action by the local councillor and residents' expectations were not met.

Relevant points of concern in this inappropriate process of the sale of public land are as follows –

- Local public land was exchanged without community consultation.
- The land received was intended for community use, but the council decided to sell a significant portion of the land without consulting the community.
- Resulting from community pressure, meetings were eventually held and residents views put forward which the community believed would be taken into account, however it is evident these were never followed up as the decision had already been made.
- Due to the lack of transparency in the process of this matter, there is still considerable lack of detail of what actually took place and the full story has never been available to the community.
- It appears that a significant area of public land has been sold without community approval

Example II

Sale and/or alienation of Public Land – Pakenham Golf Course Land and adjoining land (totally approximately 91 hectares).

In February 1977, a total of approximately 91 hectares of land located between Ryan Road and Oaktree Drive, Pakenham, was formally transferred to the former Shire of Pakenham (now Cardinia Shire) by eight farmers who were seeking to subdivide a portion of their land holdings. They were advised by the council that the land could never be built upon because it was flood prone. At the time of the transfer, there were formal legal agreements between council and the farmers that the land given was to be used for future public recreational purposes. One farmer who had given a greater portion of land than the other seven emphasized that use, being recreational purposes, in the agreement which he signed.

Shortly afterwards, a group of local golfers formed a club, leased 60 hectares of the land (at a nominal annual rate of $10 per annum), obtained a loan and gradually created what is now known as the Pakenham Golf Course. The remaining 31 hectares were leased for cattle grazing at $2,000 per annum. Over 30 years since 1977, there has been no public recreational use of the land and the current cattle grazing lease is still in place at $2,000 per annum.

Between 2001 and 2004, the council Chief Executive Officer (CEO) at the time negotiated with the golf club board of management the provision of a new golf course elsewhere in the district to allow for the sale and housing development of the 91 hectare parcel of land, with the new course to be funded by a portion of the proceeds of the sale.

In June 2004, an advertisement appeared in the real estate section of The Age newspaper offering the land for sale by expression of interest. In August 2004, a public notice regarding Planning Amendment C66 (rezoning and development of the land in question) drew over one hundred objections and the matter was referred to the Minister for Planning who would appoint a three member panel.

In December 2004, a contract, conditional upon rezoning approval being obtained, was approved by six of the seven councillors and signed by the CEO under delegation.

The panel hearing took place in April 2005 and in September 2005; the panel recommended that the development project be abandoned. However, the council proceeded by forwarding Amendment C66 to the Minister for planning requesting approval.

In the meantime, a new council was elected in November 2005, and when a deed of variation extending the contract plus three further contract extensions took place during 2006 and early 2007, three of the seven councillors voted against those extensions.

In August 2007, the Minister handed down a decision refusing approval of the Councils planning amendment to rezone the land, stating that the land should

remain a public resource, following which the Council administration gave a further two month contract extension to the development company who wished to '*consider its options*' to purchase the land without the rezoning approval which had previously been a condition of the contract.

It is anticipated the Council will again consider the developers contractual '*rights*' at the end of October 2007 when the current extension ends.

The following points are relevant in this six year process of the Council attempting to sell land originally gifted to the community for public recreation.

- The donors of the land trusted the council to honor the agreements they made in 1977.
- Over 30 years, other than the golf club activity, the community have not benefited from use of the land.
- Many of the council meetings to discuss the proposed sale of the land were held '*in camera*' and the community were unaware of what was happening.
- The council entered into a contract with the developer prior to the public panel hearing to consider community objections and before any ministerial decision of approval was available.
- Community objectors to the proposed land sale have campaigned for three years, using their private resources and time but the council has ignored their objections.
- The council has spent over $500,000 on legal advice, consultant's reports and Queens Counsel representation at the panel hearing, contractual extensions and extra consultant's reports.
- In 2004 the negotiated contract price was $22,000,000. In 2007, the land value is considerably higher but the CEO states that the original price will be adhered to. The local government act requires that four weeks public notice of sale be given and a current valuation obtained not more than six months prior to the sale.
- The Minister for Planning as the final arbiter in this matter handed down a decision. The council has shown total disrespect for the lawful process by not accepting the minister's decision.
- The council is continuing to consult with a developer as to how they might subvert the process and defy the ministers ruling that the land should remain as a public resource and open space.
- The land in question is the last comparable area of available public open space in the district. It is within walking distance for the rapidly growing local community and being the junction area of three local creeks, it ideally suited to wetlands, conservation and parkland with walking tracks and bicycle paths.

Appendix II

CARDINIA RATEPAYERS & RESIDENTS ASSOCIATION

ACN: A0045097F

CRRA Statement of Purpose

- To act in the best interest of all ratepayers and residents in the Shire of Cardinia.
- To create a network facilitating communication, co-operation and support among ratepayers and residents, town groups and community groups within the Shire of Cardinia.
- To function as an educational body and to disseminate information on issues and processes affecting or concerning the shire of Cardinia.
- To work for equity for ratepayers and residents throughout the Shire of Cardinia.
- To work for accountability in the administrative process of Cardinia Shire, all tiers of Government and other relevant bodies.
- To work for improved democratic process and public participation in local government.
- To put LOCAL back into local government.

End of document
September 2007