

SAVING THE PARKS

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Across the developed parts of the state in the cities, towns and villages the claim that open spaces are crucial to local identity and quality of life is testified by the community action to protect them. Some of the longest living community groups have been campaigning on such issues.

The campaigns and groups are also formative places for environmental activists, introducing them to environmental principles and contact with the wider movement. At the same time the larger groups like Total Environment Centre and Nature Conservation Council devote resources to helping the local groups, keeping in touch with the grassroots and helping focus on systemic problems with the planning and development regime.

The battle for the parks is a sign that a city is bursting at the seams. In the early stages of any city's development urban open space largely exists naturally (except for the provision of facilities for organised active recreation). In such a situation of ample natural supply rarely do political forces emerge pushing for any positive protection or management policy for urban open space.

As cities grow, pressure for the development of land previously used as de facto open space increases. However, as population densities in an area rise with this development the need for urban open space also grows. Hence there arises a time in the history of every urban locality when if the need for open space is to be met, there must be positive policy to protect open space from the pressures of development and an equally positive managerial policy.

Sydney has been in this state of 'open space crisis' for many decades. First the County of Cumberland green belts were dismantled to make way for urban sprawl. Then conflicts arose for competing demands on open space land. Examples are found in a 1980 TEC report, 'Urban Open Space – a policy crisis' which lists almost 50 instances of park and open space alienation.

- Building of a leagues club and associated member facilities including car parking on Parramatta Park
- North Sydney Bowling Club uses adjacent open space for a car park and illegally erects a sign, 'private car park'. Resident complains to council, which orders it to be taken down
- Rodd Island in Iron Cove is leased by the Trust to a harbour cruises company. The lease fee is covered with less than a week's revenue. Presses for a 120 seat restaurant
- 130 trees are cut down in Oakleigh Park, Thornleigh by local council to build two full size ovals and netball courts
- Plan to alienate one third of Roy Johanson Park in west Wollongong for soccer club amenities block and fencing

- Swallow Rock reserve to lose sizeable portion of mangroves for a boat ramp
- Five parks along Wolli Creek targeted for new expressway.

Urban park controversies can also elevate to the top of the local and state political agenda, particularly at election times. Most recently we have had the ADI site reverberating at all three political levels. In the 1970s the Wran Government obtained good political capital from protecting the Cooks River parklands, which were besieged by a freeway on one bank and an oil pipeline on the other. Efforts to restore the river and its banks continue today.

Often a centerpiece of political party environment policy is the creation of new local parks. In 1995 the then Carr Opposition promised seven new regional parks in the west, north west and inner suburban areas. His media release at the time (23 January 1995) also refers the Coalition government's Urban Parks Authority and that it had not created any new parks since its establishment.

Over the years a number of principles have been developed in response to the continual depletions on open space. In a report, 'The Ethics of Community Land' TEC and other environment groups (2000) stated:

- Parkland is not a temporary use.
- Parks are acquired by Councils for present and future public recreation or protection of the environment, public foreshores or access.
- Parks are not convenient assets to raise revenue or be treated as a land bank for development. Parks can be donated to councils as a gift to future citizens; be a contribution from subdivisions to the public domain and a balanced development proposal; or acquired by resumption for a public purpose - and should be respected as such.
- It is not acceptable to sell parks at the request of neighbours or developers.
- Covenants running with the land should be honoured.
- Any proposal to reclassify, sell or lease community land must be through an extensive investigation of benefits and costs across a range of values; full public access to information, including titles, uses (present and future), values, contamination, reports, etc; and an adequate public hearing process.

Such statements revealed a need to change the policy settings. While there have been many long and eventually successful battles to protect the parks and open spaces, it has been necessary to change the system of dedication, zoning, management and leasing to stop the problems occurring in the first place. These efforts do not always fully achieve their goals, sometimes they occur in stages, but they have been essential in bolstering up the parkland estate against the pressures of an ever growing city. There have been two key policy developments over the last 25 years.

1. State Environmental Planning Policy 19 – Bushland in Urban Areas

The SEPP attempted to reduce the threats from adjoining and direct development on bushland, much of which was inside urban parks. Key concepts were:

1.1 Legal recognition of the varied values of urban bushland:

- 2 (1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:
- (a) its value to the community as part of the natural heritage,
 - (b) its aesthetic value, and
 - (c) its value as a recreational, educational and scientific resource.
- (2) The specific aims of this policy are:
- (a) to protect the remnants of plant communities which were once characteristic of land now within an urban area,
 - (b) to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long term,
 - (c) to protect rare and endangered flora and fauna species,
 - (d) to protect habitats for native flora and fauna,
 - (e) to protect wildlife corridors and vegetation links with other nearby bushland,
 - (f) to protect bushland as a natural stabiliser of the soil surface,
 - (g) to protect bushland for its scenic values, and to retain the unique visual identity of the landscape,
 - (h) to protect significant geological features,
 - (i) to protect existing landforms, such as natural drainage lines, watercourses and foreshores,
 - (j) to protect archaeological relics,
 - (k) to protect the recreational potential of bushland,
 - (l) to protect the educational potential of bushland,
 - (m) to maintain bushland in locations which are readily accessible to the community, and
 - (n) to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation.

1.2 A wide ranging definition of bushland, that acknowledged its remnant nature and restorative capacity:

bushland means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation.

1.3 Introduction of a consent process (excluding certain necessary works) that gave focus to impact assessment of bushland disturbance in a decision making system:

- 6 (4) A person shall not disturb bushland zoned or reserved for public open space purposes without the consent of the council.
- (4) A consent authority shall not consent to the carrying out of development referred to in subclause (1) unless:
- (a) it has made an assessment of the need to protect and preserve the bushland having regard to the aims of this Policy,
 - (b) it is satisfied that the disturbance of the bushland is essential for a purpose in the public interest and no reasonable alternative is available to the disturbance of that bushland, and
 - (c) it is satisfied that the amount of bushland proposed to be disturbed is as little as possible and, where bushland is disturbed to allow construction work to be carried

out, the bushland will be reinstated upon completion of that work as far as is possible.

1.4 Bushland adjoining land zoned or reserved for public open space has to be considered (off site impacts)

- 9 (1) This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.
- (2) Where a public authority:
- (a) proposes to carry out development on land to which this clause applies, or
 - (b) proposes to grant approval or development consent in relation to development on land to which this clause applies,
the public authority shall not carry out that development or grant the approval or development consent unless it has taken into account:
 - (c) the need to retain any bushland on the land,
 - (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and
 - (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

These are important rules, which while not absolute, certainly put bushland open space at the main decision table.

2. Local Government Act

The next big effort was to stop the rate of alienation of community land that was created under the new Local Government Act 1993. A large range of issues arose including dedication, leasing and plans of management.

Under the Local Government Act all land acquired by councils is automatically classified as community land, unless council resolves within three months of acquisition to classify it as operational. A number of councils adopted the practice of classifying newly acquired land as operational to avoid conducting a public meeting on a reclassification proposal should they wish to sell or lease the land in the future. The Act also states, however, that a council must not resolve to classify the land as operational if such a resolution would be inconsistent with any other Act or the terms of any instrument executed by the donor or transferor of the land.

This is important as it restricts the ability of councils to classify land dedicated for open space and conservation purposes as operational.

In the 1998 Bathurst Council v PWC Properties case the High Court took a very broad interpretation of the definition of a trust. It can be simply an obligation placed on council by the intent of the dedication of the land to council.

This has important implications for land dedicated to council in section 94 contribution plans as open space or conservation land. The 1998 High Court decision was instrumental in preventing Lake Macquarie City Council from classifying a wildlife

corridor to be dedicated under a Section 94 contributions plan for a major residential development as operational land. The 1998 High Court judgement would clearly suggest that dedicating the land as a wildlife corridor would place a trust upon the land that it be maintained for that purpose. Classification as operational land (permitting sale or lease) would obviously be totally inconsistent with such a trust. When this precedent was drawn to council's attention the proposal to classify the land operational was withdrawn.

The High Court's judgement means that it is probably illegal for councils to resolve that land dedicated under Section 94 contribution plans for open space or conservation be classified as operational.

However, it soon became apparent that there were other problems with the way community land was being managed. A major community campaign was launched resulting in the new *Local Government (Community Land Management) Amendment Bill 1998*.

The Local Government Act 1919 provided a set of rules to regulate land uses for public land. The 1993 Act transferred much of the power to regulate public land use to councils. It required councils to classify all land under their control as either community or operational. According to a note in the 1993 Act:

"The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means."

Key amendments:

2.1 Increased the opportunity for public hearings

Under the 1993 Act, Councils could reclassify community land as operational land in two ways, either through a local environmental plan (LEP), or (in limited circumstances) by resolution. Councils previously held a public hearing in respect of a reclassification by LEP only. Now there is a further requirement that reclassification by resolution also requires a public hearing. Public hearings will also now occur in connection with the making of plans of management. In addition, a hearing must be held into a draft Plan of Management that looks to change the category of land that an area is placed in. The amended Act now provides that public hearings must be conducted by a person independent of the council.

2.2 Increased transparency when trusts, covenants or similar restrictions are removed

The 1993 Act provided that upon land being reclassified from community to operational, any trusts, covenants or similar restrictions over the land automatically ceased to apply. As a consequence, many members of the public were surprised when they found out that when land was reclassified, conditions of its initial grant to the council that it be used for public purposes ceased to apply to the land. The changes provided that this will no longer automatically occur; and if a council wishes to remove restrictions over community land, then that removal must be expressly provided for in the local

environmental plan that reclassifies the land. This will ensure that members of the public inspecting the draft local environmental plan will see more readily that these restrictions are being removed, and will be able to make submissions about the desirability of the restrictions.

2.3 Provided more meaningful categories of land

The Act requires councils to place all community land into a series of categories - natural area, park, sportsground or general community use. However, prior to the Bill, this was a virtually meaningless exercise, as there was no statutory consequence of categorising land in this way. In *Friends of Pryor Park v Ryde Council* (1996), the Court of Appeal held that the granting of a lease for the conduct of a child care centre in the middle of land categorised as a natural area was permitted under the 1993 Act. This was because the proposed land use was judged not "manifestly inconsistent" with the categorisation.

To redress this, the amendments added a series of statutory "core objectives" for each category of land, which govern the way the land can be managed (see attached). Leases and licences will only be able to be granted if they are consistent with the objectives of that category of land. This provides more meaning to the process of categorisation, and imposes a more rigorous test than that laid down by the Court of Appeal. Where land is categorised as a natural area, the Act now permits only a very limited, specified range of buildings to be built or uses to be carried out on that land. These include walkways, pathways, bridges, observation platforms and signs which can be built; as can information and refreshment kiosks, work sheds and toilets, but uses such as restaurants and child care centres that have previously been carried out in natural areas will not be permitted.

Also, in addition to the Act, there is a new regulation that gives specific guidance about what each category of land can include to prevent misidentification.

2.4 Gave specific recognition of special aspects of community land - threatened species and cultural attributes

The new Act recognised that some community land may contain critical habitat under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994. Community land that contains the critical habitat which has an existing plan of management needs a new plan to be drawn up in recognition of its special attributes. These plans have to meet the requirements of the Director-General of National Parks and Wildlife or the Director of NSW Fisheries. Another characteristic to be recognised in the new Act concerned the special cultural or natural (including wildlife corridor) features of community land. Cultural significance is inclusive of Aboriginal, aesthetic, archaeological, historical, technical or research or social importance.

2.5 Improved fund control: funds from community land leases to be used for community land

An amendment required that although lease money will be paid into a council's consolidated fund, the council must use that money primarily for buying more community land and managing existing community land.

2.6 Created tighter restrictions on leases

Under the 1993 Act, if a lease of between 5 and 21 years was to be granted over community land, the lease had to be advertised; and if there was an objection to that lease, the Minister had the power to overturn any decision to grant a lease. These provisions now also apply to leases of less than 5 years, preventing a council from avoiding Ministerial review of a lease by continually granting leases for less than 5 years.

Another potential loophole in the 1993 Act was that once a lease was granted over community land, it could be sub-leased for any purpose, including one not authorised by a plan of management. This loophole was closed by the Act, which requires any sub-lease to be granted for the same purpose as the original lease, or a purpose permitted by the Regulations.

The Act now provides that any lease for a period of longer than 5 years must be the subject of public tender, unless the lease is granted to a non-profit organisation.

2.7 Required public exhibition of changes to draft plans of management

There was no requirement to re-exhibit a draft plan of management if a council decided to amend it. Under the new Act, all proposed changes to draft plans have to be publicly exhibited.

The battle for the parks thus moved from the local to the global, that is the decision making system in place for government agencies and councils was improved overall and while not perfect, reduced the degree of alienation. Nevertheless community groups need to remain vigilant.

3. The Metro Strategy

Sydney is still growing with the projected expansion of the city to north west and south west. Key decisions will be made about bushland protection and provision of parklands in the new suburbs. We should do all we can to avoid the mistakes of the past. Curbing the loss of bushland must be a key plank of the Metropolitan Strategy.

Maximum protection of bushland communities and corridors and maintenance of a **permanent** green belt of open space must be key elements of the strategy, as should targeted recovery/stabilisation of nominated threatened species and vegetation communities. Additionally agricultural practices will need to reduce their polluting and habitat fragmentation impacts, through programs that implement best practice.

These targets will require the development of measures to protect land in public and private ownership. Such measures should include:

- allocation of acquisition, incentive and restoration funding from the Development Commission;
- strict clearing and development controls on the green belt, whether privately or publicly owned through planning controls such the proposed SEPP and application of the Native Vegetation Act maintain or improve test, in order to dampen speculative clearing;

- use of permanent conservation orders; and
- an act of parliament to protect publicly owned green belt and strict controls and transparency on any leasing and other alienation proposals

In addition regional and local groups will have to persist in their campaigning and participation in the planning process.

Application of all the lessons from the past 50 years of efforts to save the parks should be ensured – as open space and bushland preservation are essential to an environmentally sustainable city.