Submission No 185

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

Name: Mr Hugh Williamson

Date received: 8/04/2008

Dear Madam

I am writing to you in respect of a very clear conflict of interest.

The Local Community at Bungonia in NSW (nr Goulburn) has been resisting for a long period an attempt to totally change the area.

A company called Chicken Enterprises Australia Limited (CEAL) t/a Multiquip has been refused permission before for the development of a sand and hard rock quarry. See CEAL Limited v Minister of Planning [2007] NSW LEC 302.

The tests for treatment under the SEPP Major Projects 2005 are based on state significance and public interest.

If a project, despite fitting into a category, does not pass the necessary test then it is the duty of the Minister to devolve the decision making process in respect of a particular project back onto a local Council.

In this case the project has been shown clearly to be not in the public interest and certainly to be not of State significance. Nothing in relation to the project can be changed that much to make it suddenly in the public interest. That much is obvious.

Further there is a duty under SEPP Major Projects 2005 on the Minister within a year of a project becoming of public significance by reason of SEPP Major projects 2005 for the project to be reviewed. Upon a review a project, if it is appropriate, will be taken off the list of SEPP projects (whether or not in a notional category). The review clearly took place here. The project received Ministerial and Land and Environment Court attention. It was obviously not in the public interest nor of State significance. Despite that it has remained in the Minister's office.

As you will have gathered what is now in the Minister's office is a new application. Although the DA is new , the subject matter is not and it has been shown already that the application is not in the public interest nor of State significance.

The Ardmore Park / Quarry project has had its consideration as a "State Significant" project. That began under the predecessor name to this SEPP, "State Environmental Planning Policy (State Significant Development) 2005." The SEPP (Major Projects) 2005 replaced the previously named SEPP and commenced operation on 25 May 2005. The relevant clause is 14 which reads:

"14 Transitional provisions

(1) If, immediately before the commencement of this Policy on 25 May 2005:
(a) a development application in respect of any development had been made but not finally determined, and
(b) the development was not State significant development,
this Policy (as in force on that commencement) does not apply to or in respect of the determination of that development application.

(2) If, immediately before the commencement of this Policy on 25 May 2005:
(a) a development application in respect of any development had been made but not finally determined, and
(b) the development was State significant development,
this Policy (as in force on that commencement) applies to and in respect of the determination of that development application.
(3) Subclauses (1) and (2) are subject to the provisions of Part 3A of the Act and the regulations made under the Act for the purposes of that Part.
(4) Subject to subclause (3), this Policy does not operate to make the carrying out of development for the purposes of a mine, as described in item 7 of Schedule 1 to the Environmental Planning and Assessment Model Provisions 1980, a project to which Part 3A of the Act applies if the carrying out of the development would be prohibited or require consent but for the authority conferred by:
(a) the adoption of clause 35 and that item of those Model Provisions under an environmental planning instrument applying to the land concerned, or
(b) a provision of an environmental planning instrument, applying to the land concerned, that has the same effect in relation to mines as clause 35 and that item of those Model Provisions.
(5) Subclause (4) ceases to have effect:
(a) in relation to development carried out underground—on 1 August 2010, or
(b) in any other case—on 1 August 2007.
(6) For the avoidance of any doubt, nothing in subclause (4) prevents an application to carry out development for the purposes of a mine from being made during the transitional period (as referred to in subclause (5)) for the type of development concerned.

The Minister for Planning dealt with this matter under SEPP(Major Projects) 2005 because the Minister's decision was pursuant to the transitional provision at 14(2) above. That is even if the application was made before 25 May 2005. Because the determination was made on 2 August 2005 it was a determination under SEPP(Major Projects) 2005. In view of the provisions of the rest of SEPP Major Projects 2005, the Minister's powers are now exhausted. Any step now taken by the Minister will be ultra vires. That has already been pointed out to the Minister's office.

The new Development Application should be dealt with at Local Council level as it was adjudged neither state significant nor in the public interest. However, as stated, that has not happened. Instead the new DA remains in the Minister's office.

Now I find out that Multiquip are on the register of donors to the labour party at the last State Election. There is a saving provision in the SEPP Major Projects instrument 2005. It says that the matter can still go to the Minister where there might be a conflict of interest in the project being dealt with at Local Council level.

There is some irony in this. The conflict of interest -or at least the perception of a conflict of interest- is actually in the Minister dealing with the matter. That rises for 2 reasons:

1) The Minister has kept the matter in his office despite the terms of the legislation and despite it being pointed out that this project should not be in the Minister's office (and indeed that he is acting ultra vires in keeping it in his office). It is not a matter of state significance and is certainly not in the public interest. Furthermore the project requires the use of crown land. But for the draconian Part IIIA powers it would obviously be necessary for the adjudicator to have a look at State significance and public interest in the context of Crown Land and the legislation governing its use. However , it could be argued that the Minister of Planning can ignore all of that under Part IIIA. So an ancient statute and system of governing the use of land (essentially belonging to the people) which has been in existence for a very long time can all of a sudden be swept aside if one man thinks it ought to be. Frankly an amazing step. All safeguards swept aside and an amazing degree of power placed in the hands of one man. My reading is that a Minister would still have to justify in the public interest a new or dual use. However, it may be that there is no effective right of appeal so a simple Mugabe style justification would suffice! It would appear that it may be unnecessary to offer any more than a subjective excuse as there is no arena for objective testing. The law has got itself into an appalling state.

2) The project proponent has stated that it has connections in the right place to get this project approved. On top of that the project proponent is a donor at the last election to the Labour party. So the connections are well understood and the perception is that the project has been kept (wrongly) in the Minister's office because of the much vaunted connection.

In the circumstances it is crystal clear that it would be totally out of line with the usual principles of natural justice (in particular justice not only being done but also being seen to be done- but also in this case audi alterem partem or "let the other side be heard"- something which Part IIIA does not allow)for the matter to remain in the Minister's office.

Please can this point be well and truly flagged otherwise one of the most ancient rural communities in NSW will be destroyed for the sake of lining the pockets of a company. The perception will be that that company has achieved that result as a result of extraordinary legislation which has been passed so as to sweep all before it and prevent the usual appeal process. That will be extraordinary where it is already clear that the project is neither in the public interest nor of state significance.

In circumstances where the proponent is a donor to the labour party and has boasted about the connections which mean that objection will be fruitless and where the Minister has retained control of the decision making despite the terms of the statute, this matter should be high on the agenda as an example of the wrongs which appear to be done under the current electoral funding system. It is also clear that a speedway to a planning green light is the most obvious place for corruption. Certainly the perception of corruption arises very easily in these circumstances. Where planning matters are concerned the Courts alone should be the second limb to Local Council.

Furthermore the right to appeal should not be taken away. If politicians do not like that then it is because planning gives them an awful lot of power and they would see that as not necessary. However, the Government is the wrong organ to decide planning matters. They should legislate the rules but the Courts should ultimately apply them.

Can you please let me have details of all donations over $1500 :

1) before the 2007 State election; and

2) After the 2007 State election

in either case made by CEAL T/A Multiquip or by Red Lea Chickens or by any associate of either of those companies or by anyone otherwise connected with those companies or their associates (and whether or not any donation has been made by a 3rd party professional person or any other 3rd party person on behalf of any person within the category described).

Alternatively please can you let me have contact details for a person who can provide me with the relevant information.

Regards

Hugh Williamson