

**Submission
No 12**

**INQUIRY INTO BADGERYS CREEK LAND DEALINGS AND
PLANNING DECISIONS**

Name: Mr Mark A. Stevens

Date received: 30/09/2009

SUBMISSION

(INQUIRY INTO BADGERY'S CREEK LAND DEALINGS AND PLANNING DECISIONS)

I would like to address Terms of Reference (e) and (f). Presently in New South Wales Development Applications and Re-Zoning Applications are essentially matters for the Administrative (Executive) arm of Government. Some matters are dealt with by Local Councils under Statutory Powers conferred by State Parliament (Local Government is a " creature " of Statute). Other matters are dealt with by the State Government, mainly but not exclusively by the Minister for Planning.

Such decisions are not routinely scrutinised by Parliament (so there is a lack of transparency). Further, the large windfall profits that can sometimes be made by land owners and property developers from planning decisions has led to the potential for, and the public perception of, corruption when land owners and developers make political donations.

The Planning Decisions which are most likely to lead to corruption are Development Applications and so called " Spot Re- Zonings " (where one or some parcels of land are re-zoned but the zoning of the immediately surrounding land remains unchanged). One way of reducing the potential for corruption surrounding such decisions would be to amend the relevant legislation to make such decisions "Judicial Decisions " rather than " Executive Decisions ". I respectfully suggest that this result could be achieved as follows :

1) Requiring all Development Applications and Spot Re-Zoning Applications presently determined by Local Councils to be determined by Local Court Magistrates in a new Division of the Local Court to be called " The Planning and Environment Division of the Local Court ".

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- 2) Requiring all Development Applications and Spot Re-Zoning Applications presently determined by the Planning Minister and other State Government Ministers to be determined by the Land and Environment Court (which already has certain appeal powers in respect of such matters).

Judicial Decision making would have a number of advantages. Public hearings would make the decision-making transparent. Local Court Magistrates and Land and Environment Court Judges enjoy Judicial Independence (they are independent of direction from the Executive arm of Government) by virtue of the fact that they are appointed until age 70 years and can only be removed from their positions by the Governor after an address by both Houses of Parliament on certain very limited grounds. As Magistrates and Judges do not have to seek periodical election to continue in office the issue of campaign donations is not relevant to them. Over time Judicial – Decision making would lead to a body of case-law setting guidelines if not precedents as to how such applications are to be dealt with in the future. This is preferable to arbitrary and discretionary decision making by Local Councils , Government Ministers and Planning Beurocrats which can be used as a cover for corrupt conduct.

In any such proceedings before the Local Court and the Land and Environment Court the legislation should provide that the proper parties to the proceedings are : the Applicant (e.g. the land owner), the Local Council (representing the local community as a party to the proceedings not as the decision maker), the relevant State Government Department. In addition local residents and adjoining land owners if they apply to be joined in the proceedings. Local residents and adjoining land owners should have their legal fees paid by the Legal Aid Office. The Magistrates and Judges should also have a discretion to allow other interested parties to join in the proceedings such as, for example, Environmental Protection Groups. Heritage and Historical Societies, Local Chambers of Commerce, Housing/ Building/

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Real Estate Industry Organisations, and Community Welfare Organisations.

Changes of the kind outlined above would ensure a high level of transparency, enable all relevant stakeholders to be represented and prima facie ensure Independent Decision Making with minimum potential for the process to be corrupted.

In the case of what might be described as general planning decisions (other than Development Applications and Spot Re-Zonings which affect only one or some parcels of land) such as new and amended Local Environmental Plans, State Planning Instruments, new land releases etc the decision making process for these needs to be made more transparent also.

In the case planning /zoning changes to be made by Local Councils the Councils should be required to take the following steps before a decision is made:

- 1) Notify all residents and rate payers of :**
 - a) Full details of the proposal including the reasons for the proposal.**
 - b) The procedures for making submissions in relation to the proposal including time limits for submissions.**
 - c) The time , date and place of the Council meeting when Council will make a decision on the proposal.**
 - d) The names of all Councillors and Political Parties represented on Council who have received donations from any person or entity which will be favourably or unfavourably affected by the proposal.**

In the case of planning and development decisions made at State level these should require Parliamentary approval rather than Ministerial approval. The procedure should be that initially such proposals should be investigated by an all Party Standing Committee of the Legislative Council which should call for submissions from all stakeholders. Submission should be sort by newspaper advertisement and by notices given to residents and landowners in the area close to the land affected by the proposal. The advertisements

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and notices should advise the reasons for the proposal and also specify which members of Parliament and which Political Parties represented in Parliament have received donations from any person or entity which will be favourably or unfavourably affected by the proposal. After the Committee delivers a Report on the proposal with recommendations the proposal should be submitted to Parliament with the passing of a Statute (in the usual manner) being required to lawfully authorise approval of the proposal.

Another step which could be taken to enhance the integrity and public confidence in the planning and development process would be the introduction of a new State " Windfall Tax " to be in addition to the existing State Land Tax and which be a tax charged annually on the increased capital value of land which is attributable to the granting of a Development Application or ReZoning or other Planning Decision. The huge windfall profits which sometimes accrue to land owners from Development approvals and Rezoning create the temptation to engage in corrupt conduct in relation to Development and Planning decisions. A Windfall Tax would reduce the incentive for such behaviour. A Windfall Tax would also have the following other advantages namely : it would discourage speculative land dealings which drive up land and house prices to the detriment of first home buyers and it would raise additional revenue for the State Government for hospitals, schools, public transport, public housing and to provide for the cost of the infrastructure required as a result of Development Applications and Rezoning.

If possible I would like to appear before the Committee to give evidence by way of expanding upon and further explaining the above proposals. Further if it is permissible to do so under the Terms of Reference I would like to also present to the Committee some proposals in relation to reform of Electoral Funding and Disclosure Laws and The Independent Commission Against Corruption Act.

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I believe these matters also impact upon the integrity and public confidence in the Development and Planning Process. My contact details appear below. Please acknowledge receipt of this Submission.

Yours, faithfully


(MARK ANTHONY STEVENS)