

Submission  
No 8

## INQUIRY INTO BADGERYS CREEK LAND DEALINGS AND PLANNING DECISIONS

Name: Ms Jill Walker

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Partially Confidential

SUBMISSION TO  
Badgery's Creek land dealings and property decisions (Inquiry)  
25 September 2009

Like many others in New South Wales, I bitterly resent the need for constant submissions and letters to a corrupt State Government and weak Opposition. Particularly in Wollongong where we have no elected Councillors to speak for the people since the Iemma Government sacked 9 innocent Councillors as well as 4 corrupt ALP ones - to facilitate the sale of public assets.

I ask the inquiry to investigate and conduct a Royal Commission into the following three matters regarding Michael McGurk murder connections and the wider corruption in NSW:

Role of Cripps and Vereker at ICAC - Current McGurk investigation &  
Wollongong City Council Inquiry  
Planning Procedures at Badgery's Creek and Destruction of EP&A Act 1979  
Request for Repeal of Part 3a (2005 & Amendments) Ep&A Act

1. Role of Cripps and Vereker at ICAC - Current McGurk investigation &  
Wollongong City Council Inquiry Please see below (Appendix A) my letter to ICAC (7/9/09) requesting investigation of Richard Vereker in the ICAC "preliminary inquiry" into Michael McGurk's business dealings and also the Wollongong City Council ICAC Hearings 2007 - 2008.

I ask your inquiry to investigate the failure of ICAC to fully investigate the role of Richard Vereker at Wollongong ICAC Hearings, and advise that ICAC is also unlikely to investigate Vereker in its current McGurk investigation. ICAC does not consider itself accountable to the public interest and ICAC's chief appointments are made by the State ALP.

Since Richard Vereker is described as a 'disability pensioner' yet donated \$75,000 to the ALP in 2007 - the second highest individual contribution his part in 'assisting' consultants and developers both in Wollongong (see below quote from ICAC transcript App A.) and the current Sydney land site should be carefully scrutinized by your inquiry.

On an ABC radio Illawarra interview "Mornings" on 31 October 2008; Commissioner Cripps was questioned by radio announcer Nick Rheinberger. From my notes at the time I heard:  
NR:

*Commissioner Cripps:*

*"I thought it was made clear I do not discuss complaints outside the commission?"*

*NR: Not complaints, conflicts of interest.*

*Cripps: I repeat I do not discuss complaints outside the Commission.*

*NR: People ask why Oxley was not recommended for charges despite being labelled corrupt. What's the difference?*

*Cripps: Repeat the question.*

*NR: What is the line between labelling a person corrupt and charging them?*

*Cripps: Evidence is given at a public inquiry, we assemble information, people have to remember a lot of information we get in a public inquiry is not admissible in a criminal trial. If we think it pointless to go further we don't recommend prosecution.*

*NR: Is the major role of the Commission to name people but not necessarily send them to jail?*

*Cripps: Yes in 1988 it was made clear; to prevent corruption, investigate and explore particular instances, and how to avoid corruption. We're not a law enforcement agency or court of law."*

However no ICAC investigation was made beyond a narrow scope involving four ALP Councillors. This enabled the Iemma government to dismiss the entire council and to appoint three Planning administrators for four years - who are now disposing of public land! One of the Administrators, Gabrielle Kibble, was Chair of Sydney Water when public land was sold to Stockland, part of which was bought back by Wollongong Council recently. The sale of public land to developers is always suspect.

On 8 October 2008, ICAC made 24 findings of "corrupt conduct" against 10 people: Beth Morgan, Frank Vellar, Bulent "Glen" Tabak, Rod Oxley, Joe Scimone, John Gilbert, Valerio Zanotto, Kiril Jonovski, Zeki Esen and Frank Gigliotti. From the first Hearing Lou Tasich was also found "corrupt".

ICAC also recommended seeking advice from the Director of Public Prosecutions (DPP) with respect to prosecuting 11 individuals (Beth Morgan, Glen Tabak, Frank Vellar, Joe Scimone, Valerio Zanotto, Kiril Jonovski, Zeki Esen, Frank Gigliotti, Ray Younan, Gerald Carroll and Lou Tasich) for 139 criminal offences. As there has been no further action I request reinstatement of electoral rights for Wollongong residents, to elect our own Council again.

2. Planning Procedures at Badgery's Creek and Destruction of EP&A Act 1979 A Sydney Morning Herald article titled *"How a quiet bush block turned into a goldmine"* (7/9/09) by Kate McClymont, Vanda Carson, Linton Besser and Dylan Welch regarding the subject land states in part:

*"The developer Ron Medich stands to gain millions from a western Sydney site he bought 13 years ago for a pittance from the CSIRO, confidential documents obtained by the Herald show..."*

*Mr Medich, who used to employ Mr McGurk before they fell out over a \$10 million debt, and his brother, Roy, bought a 344-hectare parcel of land at Badgerys Creek in 1996. They paid \$3.5 million, half the amount similar blocks were fetching at the time.*

*The land was zoned for rural use. However, its value is set to skyrocket now it has been earmarked for commercial use.*

*"Confidential planning documents obtained by the Herald state the "\$1 billion" project, of which the Medich holdings make up half, involves an "integrated business and logistics, service, manufacturing, warehousing and distribution hub". Titled "Proposed Major Project Declaration," the document has a margin note saying: "[A planner] advised that the declaration should be as wide as possible to potentially support a degree of residential use." ...*

*Graham Richardson, "a lobbyist for Mr Medich, said Mr McGurk wanted \$8 million from the developer for a tape he said could be disastrous for the Government. "He wanted money from Ron Medich and lots of it: millions of dollars," he told Channel 9. The Labor powerbroker said an intermediary, Richard Vereker, had approached him about the tape."*

*"Last night Mr Vereker, a former butcher and bookmaker and a major donor to the Labor Party, told the Herald he approached Mr Richardson on Mr McGurk's behalf but he denied knowledge of any blackmail. "McGurk knew that I knew Richo," he said. Mr Vereker said he had not heard the tape and he was being interviewed by police this morning"...*

*"Shortly before his murder, Mr McGurk provided the Herald with the names of several state and federal politicians, along with senior bureaucrats and local councillors, whom he claimed had corrupt dealings." ...*

*The Herald has been told that when the proposal was floated two years ago, the Medich rural landholding was outside the Government's proposed development area. The document does not reveal why this changed. The project was to be announced in March, but cabinet put the decision on hold.*

*There is no suggestion either Mr Medich or Mr Richardson are suspected of being involved in the murder of Mr McGurk."*

<http://www.smh.com.au/national/how-a-quiet-bush-block-turned-into-a-goldmine-20090906-fcts.html?skin=text-only>

The SMH article does not name the DoP Planner but the "Illawarra Mercury" does. He would presumably have been acting under instructions from his superior and this is consistent with DoP Major Project Part 3A process which is intended to facilitate developer wishes despite all environmental constraints or other considerations.

I request the Inquiry investigate those rezoning procedures, and the state and federal politicians and bureaucrats named by Michael McGurk. I also request investigation of Vereker, Medich, Richardson (well-known to ICAC) and everyone else named by McGurk in his information, and the findings made part of a Royal Commission which also includes investigation of the failure of ICAC in the Wollongong ICAC Inquiry.

3. Request for Repeal of Part 3A (2005 & Amendments) Ep&A Act 1979  
There has been longterm corruption of due process in NSW parliamentary governance and it must stop. I request the repeal of all Planning amendments Part 3A (since 2005) and ask that all Part 3A approvals be declared void.

The above DOP Planner

In the Sandon Point Major Project Part 3A approval MP06\_0094 (December 2006) Director-General's Report to the Minister for Planning signed by then- Planning Minister Frank Sartor on 21/12/06; however the approval was not only dodgy but contained several legal errors and was successfully challenged in Land & Environment Court 40240 In 2007 (Walker vs Minister for Planning) on the ground that the minister had failed to consider climate change impacts on a known floodplain.

Not only did the minister fail to consider ESD impacts - but the DoP had ignored sound expert advice from other government departments DECC, DNR, DPI, Housing, SES, RFS etc. A later appeal to the NSW High Court failed to require the current EP&A Act to comply with ESD legislation, as the EP&AA has only an Objective to "encourage" but not to uphold ecologically sustainable development. This anomaly must be amended immediately.

Under current Planning legislation Part 3A Major Projects take precedent over all other legislation so is contradictory. It gives total power to Planning Minister Keneally and ignores human and environmental rights - for which NSW has as

yet no legislative obligation. NSW should immediately adopt a Bill of Rights similar to that of Victoria.

Major Projects Part 3A was engineered specifically by DoP lawyers to enable corruption, bribery and preferential treatment, and tramples on the human and environmental rights of communities. It vests all power in the Minister for Planning; is a tyrannical and unjust piece of legislation that takes no account of the environment, the public interest or community rights to meaningful consultation. Also numerous SEPP's and Policies override the rights of Agency and community consultation and result in monstrous McMansions and high density in small villages, degraded suburbs, and environmental vandalism.

I quote an expert opinion on this matter: ABC "Stateline" "The Land Bribe" (11/9/09) an interview with Senior Counsel Tim Robertson by Nick Grimm:

*TIM ROBERTSON "The changes that have been made since 2005 have concentrated enormous power in the hands of one person, the Planning Minister, and it has returned the state to the position we were in about 1965... We are now in a position in our planning system that we have returned to the days of Bob Askin.*

*NICK GRIMM: So in a nutshell, what's wrong with the way the planning and development is conducted in this state?*

*We've taken a huge area of development decision-making ... where power had been previously diffused amongst the community and in community leadership nodes such as local government, and we've concentrated that power in the hands of one person. And that person's decision-making is essentially ungovernable.*

*The court can only police the boundaries of it, it can only police legality. But there is really no merits review of that decision any longer, because the Government has cut out merits review by appointing panels or by requiring concept plans to be prepared, both of which are steps taken for the purpose of preventing judicial review of the Government's decisions. And in the case of major infrastructure projects, which the Government decides are important enough to classify as such, there is no right of appeal by anybody for any reason and the implementation of those projects, even in breach of conditions applied by the minister, him or herself, is uncontrollable by the courts.*

*There's a further problem with the system, and that is in the process of development decision-making, the system now is, under Part 3A, that the developer writes its own conditions. In other words, they've contracted out the process of regulation so that when the developer makes what is called a statement of commitments, then that statement represents the controls that the minister implements over the development. So it's a case where the poacher has effectively become the gamekeeper.*

*NICK GRIMM: And moreover, we're talking about a concentration of power in*

*the hands of a minister who's a member of a party which is a recipient of very large political donations from property developers.*

*TIM ROBERTSON: Well you see none of my criticism depends upon that. My criticism is of process and policy. Because what I see now are bad decisions being made, and they're being made because the kind of controls over the decision-making process have been eviscerated by Part 3A of the Planning Act.*

*NICK GRIMM: Tim Robertson, you also act for property developers. Now, given what you're saying about the planning processes in this state, what sort of advice do you give your clients when they come to you with a project that they're having difficulty getting off the ground?*

*TIM ROBERTSON: Oh, I tell them to go to Part 3A, go to the minister. You never advise your clients to go to counsel if they can avoid it. So if they fall within the description of a major project or if they have some - if there's some flexibility in the description, they should go off to the minister or the minister's department and persuade them to treat it as a major project.*

*NICK GRIMM: OK, so exactly why do you tell property developers to go to the minister?*

*TIM ROBERTSON: First of all, there's far less scrutiny; secondly, the public don't have a look in; thirdly, there's a possibility of getting an approval faster, although recently it's been very difficult to get quick approvals from the department. And finally, if there is anything dodgy about the development, then it's not likely to be looked at with the same degree of scrutiny as if they went the local government route. And I think possibly the most important thing is that if the minister does appoint a panel or has a concept plan requirement, then that cuts out the court.*

*So if objectors have rights of appeal because it's what's called designated development, they can't exercise those rights of appeal. So it makes it - it tidies it up for property developers. It reduces the risk of development and makes the - makes development easier because they don't have to comply with planning controls.*

*Planning controls are just out the window, unless there's an actual prohibition, and even then the minister can get over the actual prohibition by rezoning the land, at the same time as granting a project approval under Part 3A, and has done so and did so in several controversial cases, including the Rosecorp development at Catherine Hill Bay.*

*NICK GRIMM: So, essentially, if a property developer has a project that may lack merit, their best option is to go straight to the Planning Minister?*

*TIM ROBERTSON: There's no planning lawyer in the state who would give different advice.*

*NICK GRIMM: That's a pretty damning indictment of the way planning is conducted in this state, isn't it?*

*TIM ROBERTSON: It's a reflection of the actuality, that is, that power has been concentrated in the minister's hands and for the purpose of facilitating development approvals, certainly not for purpose of enhancing environment scrutiny of development and certainly not for encouraging community participation in development or implementing well-worked-out planning controls that local government apply to small people, small developers, who still have to go the local government route.*

*NICK GRIMM: Kristina Keneally told the Parliament this week that she wants the NSW planning system to be the best of any state or territory in the country. Now, in your view, what is going to need to overcome to achieve a goal like that?*

*TIM ROBERTSON: Oh, she'll have to sweep away the last five years of legislation, which has reversed the progress in planning by 30 years. And - but, you know, the Government's been telling lies about what its intentions are in relation to planning for years. They claimed that Part 3A would increase public participation, whereas it's only reduced it. To some extent, it's vitiated community participation altogether by giving the minister power to ignore plans and controls that have been developed in cooperation with the community. So it has, I think quite deliberately - and the Government's known what they're doing - quite deliberately taken these steps to avoid community scrutiny of controversial development.*

*<http://www.abc.net.au/stateline/nsw/content/2006/s2683929.htm>*

Also ex-ICAC Commissioner John Mant was interviewed on Stateline "Cross Examined" 18/09/2009, by Quentin Dempster who asked him:

*"QUENTIN DEMPSTER: Mr Sartor and Minister Keneally say these donations have no impact whatsoever and are offended by anybody - any journalist suggesting such a thing. Aren't they right to be offended?"*

*JOHN MANT: Well, no, because justice must not only be done, it must seem to be done.*

*QUENTIN DEMPSTER: In another recent Stateline program, we raised cases of donor-developers making cash payments to the Labor Party at precisely the same time the Department of Planning was assessing the merits of their development applications. The propriety of this practice was put directly to Minister Keneally.*

*KRISTINA KENEALLY: I'd like to observe there is nothing illegal about people making donations. It is done in accordance with the law, and in this state, thanks to changes brought in by this government; it is done with the utmost transparency.*



**QUENTIN DEMPSTER:** *John Mant says to restore public confidence in the integrity of the system, urgent reform is needed. The role of the Land and Environment Court to adjudicate on the merit of development needed to be restored.*

**JOHN MANT:** *One of the major problems for corruption in NSW is that there are not wide-standing third party appeals. In Victoria, South Australia, even Queensland, the neighbours have the opportunity to appeal to the court on the merits. This means that paying off the decision-makers is a lot less valuable. Because you never know when you're gonna be hauled to the court. Whereas in NSW, if you can get a decision in your favour as an applicant, that's the end of the matter, unless there's some legal error. So, if you wanted to get rid of corruption in planning in NSW, bring in third party appeals, fixes it quick-smart.*

**QUENTIN DEMPSTER:** *On merit?*

**JOHN MANT:** *On merit. On merit.*

<http://www.abc.net.au/stateline/nsw/content/2006/s2690710.htm>

A clear example of corruption of the Planning process has occurred at Sandon Point Bulli - Thirroul, where the Planning Department conducted "Sandon Point Commission of Inquiry" (2003) then ignored its recommendations including acquisition of certain industrial land for inclusion in a public regional park.

In 2006 the land was incorporated into a joint Major Project Part 3A State Significant Site Major Project application for Sandon Point, by Anglican Retirement Villages (ARV) and Stockland. Stockland also contributed large donations of money to the ALP prior to the approval. These are the links in the chain of corruption under which Planning operates, using secret legal lurks and deals to circumvent transparency.

At further stages of Sandon Point approval Minister Keneally must now consider ESD issues 'in the public interest', and has promised to distance herself from donating developers such as Stockland - but has not yet done so. She has commissioned another 'consultant' study into climate change impacts but continues to ignore the professional expert advice of Agency Officers and the community who are very knowledgeable about the site.

I would like to know why taxpayers are funding corrupt processes in a government that ignores the public interest. And I would like your inquiry to

end it - by immediately reversing Part 3A amendments, voiding approvals, and referring the whole scandalous situation to a genuine Royal Commission.

Sincerely,  
Jill Walker