

# Public lands, process and public policy: The links between government asset disposal programs and planning for redeveloping urban areas – Is something missing?

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## ABSTRACT

As State and Commonwealth government agencies are increasingly forced to treat parcels of public land as financial assets to be realized, our urban landscapes are losing significant public sites and infrastructure. Many sites are lost from public ownership without assessment of the significant non-financial values they may contain, such as their ecological, cultural, social, economic or potential value to the public. Disposal currently occurs in various ways – sometimes on the open market, but often through private negotiations *prior to* announcements of redundancy, sale and redevelopment. In many cases the public remains uninformed and uninvolved in both the disposal process and in the development of future options for the site. As a result the significant public values of such sites either remain unknown or are lost regardless as agencies rush to secure the deal.

The returns to government agencies from selling public land increase if rezoning and redevelopment for medium to high density development occurs. This neatly fulfills two current aims of government – urban consolidation and securing short-term windfall funds. However, the simultaneous loss of public land, services and infrastructure combined with the rapid increases in population (and subsequent increased demand for those public goods) which results places further pressure on remaining public space and services. It is argued that a more strategic approach to what should be kept in public ownership combined with a stock-take of what will be needed for future increases in population is necessary. Indeed, as custodian of both the planning system and our built heritage, governments are arguably obliged to examine longer-term considerations in their decision making with respect to public property.

This paper highlights, the experience of some high profile case studies in Sydney to demonstrate regular intervention by government in the planning process in projects involving the disposal and redevelopment of public land – to ensure that such government backed proposals proceed quickly through the development approval process. Governments typically act as proponent, consultant and approval authority (especially where there is community opposition), and the public participation usually afforded by the planning process is reduced or bypassed. Such intervention is in stark contrast to the general retreat of government from service provision that accompanies neoliberalism, and which lies at the core of the issue of public asset sales.

The paper argues that disposal programs should operate in conjunction with necessary urban capability studies to ensure that significant pockets of public land or infrastructure remain in public use and ownership to support our urban areas – particularly those experiencing rapid increases in population density. The paper proposes an improved disposal process – which it is argued, is necessary if substantial erosion of the public estate is to be avoided and more strategic use of important public property and land assets in the future planning of urban areas is to be achieved.

## INTRODUCTION

Almost 40% of land in Australia is controlled by the public sector (Bates, 2001) under freehold title or as Crown land reserved for a particular public purpose. In recent decades, state and Commonwealth government agencies have been increasingly involved in disposal of land and property under their control, as neoliberalist (often referred to in Australia as economic rationalist) ideologies have taken hold in government. Central governments and treasuries now require agencies to demonstrate efficient asset management by sourcing funds from 'non performing' assets. Consequently public sites are treated as assets that can be sold for their real estate value despite any cultural heritage, ecological, wider economic, social or other potential public value of the land due to the legacy of its past use. Such disposal programs reflect an assumption that government property is the exclusive possession of individual agencies or departments however the public perceive public land to be owned by the people, and expect governments to exercise stewardship of the land on their behalf (CRCOHP, 1996, 4; Adam, 2001).

Warnings about the impacts of public sector asset disposal on Australia's cultural and natural heritage have been raised continuously by organizations such as the National Trust (McLellan and Moloney, 1989, 15), the Nature Conservation Council (Newton, 2001, 5) the Protectors of Public Lands (PPL) (2001), the NSW Audit Office (2003) and various others including Balderstone (1997), Brooks (1997), Sutherland (2000), Adam, (2001) and Gleeson and Low (2000, 228). When viewed purely in economic terms, the evidence indicates that often the private rather than the public sector benefits most from sales of public assets. Examples include one sale of barracks in Tasmania for around 5% of an earlier valuation (Allard, 2003, 2) and National Audit Office findings on sale and lease back deals (for *operational* property assets) where tax payers are calculated to be worse off within eight to eleven years as rent levels exceed profits from sale in a number of cases (ANAO, 2001).

Public land is part of the public estate and it frequently has ecological or "strategic planning, community development, recreation, tourist or heritage value" (McLellan and Moloney, 1989, 16). Such values would be expected to be known, fully investigated and assessed prior to decisions about disposal with the public being involved in identifying and assessing the values and potential uses of public land. The NSW government has legislated for both council and Crown land to be fully assessed and categorized according to the attributes and values of the land prior to disposal or exploration of redevelopment options to ensure land that has continuing public value is retained. However, there is no legislation covering land 'owned' by individual NSW government agencies or Commonwealth land. Hence, state and Commonwealth sites are able to be declared surplus and disposed of without adequate assessment of any non-financial values – in fact as declared by the Defence Estates Organisation, assessment could well 'constrain options' for agencies seeking financial returns from surplus land (FADT References Committee Proof Hansard, 2 April, 2001, 651; cited by Adam, 2001, 48-49). Moreover, such land is disposed of and redeveloped without consideration of any 'whole of government' imperatives or strategic vision for the area.

The lack of any consistent publicly accountable process for decision-making in asset disposal and, in NSW, the frequent government intervention to allow state backed proposals for redevelopment on public sites have resulted in lengthy, expensive battles over significant sites and poor built environment outcomes. Surplus public sites represent a valuable resource in our changing urban landscapes – whether they are suitable for redevelopment for housing or other commercial use or for continued public/community use due to their significant public value. By examining some recent case studies, this paper argues that a new approach to the disposal and reuse of surplus public sites could realize important benefits for strategic planning, urban populations coming to grips with increasingly densified areas and the quality of the public estate left available for future generations.

Sydney case studies outlining recent battles for Rozelle Hospital and the ADI site at St Marys demonstrate that opportunities are in danger of being rapidly lost under current imperatives for short term fund raising in the absence of a legitimate public disposal process that involves assessment and categorization of public land according to its public significance. The paper outlines examples of the significant non-financial values of public lands and discusses governance issues such as current asset accounting requirements and the decentralization of agency activities which contribute to the issue. The case studies are presented to highlight the impacts of current disposal activities on various stakeholders and the paper concludes with a discussion of the appropriate role of government and a suggested public process for assessment, categorization and potential disposal to ensure better use of our public assets and improved strategic outcomes for urban areas.

## **THE NON-FINANCIAL VALUES OF PUBLIC LAND**

The lack of adequate assessment of the non-financial values of public lands has been attributed to the need for agencies to avoid delays in realizing returns from disposal (Adam, 2001, 44). It is highly questionable that short-term financial imperatives should preclude proper assessment of significance and public consultation in disposal decisions concerning public property. Disposal without assessment potentially results in important opportunity costs due to the loss of significant non-financial values (including environmental, social/cultural, economic and potential values) of a site.

### **Environmental Values**

Much valuable remaining bushland is located on public sites (Binning, 2001, 79-81) as a result of being locked away from development pressures since settlement. Urwin and Searle suggest the environmental attributes of public sites have significant implications for conservation and sustainability in urban areas and argue that responsible development programs would “identify the integrity of sites, prior to use...[and]...naturally occurring fauna and flora should be given a status which has an assumption of preservation rather than destruction” (1991, 5, 10). Interestingly, unmanaged ‘waste’ lands have been shown to contain double the ecological value of formal open space and agricultural grassland (Elkin et al, 1991, cited by Nichol and Blake, 2000). McLoughlin (1997, 166) notes the ecological significance of urban bushland includes natural and cultural heritage, habitat, landscape and screening, recreational, scientific, educational and environmental protection value (which includes modifying air temperature and wind velocity, ameliorating air and noise pollution, stabilising soils, and absorption and slow release of rain to reduce erosion and flooding). Adam (2001, 44) raises particular concern for the endangered Eastern Suburbs Banksia Scrub and the Cumberland Plain Woodland vegetation communities in Sydney, as greater population densities create pressure on general recreation areas increasing demands for inappropriate use of remnant bushland.

Public lands also contain public recreational space which is assuming greater importance in our increasingly densified and privatised cities. Shortages are likely to occur in older, inner-city communities that were developed when industry prevailed over residential amenity, and are now subjected to increased populations through urban consolidation (Banerjee, 2001). Planning policy in the UK protects undeveloped land with recreational or amenity value from urban consolidation if there is a local deficiency of open space (Nichol and Blake, 2000). Yet in NSW, the redevelopment of public sites occurs without regard to either the values contained on sites or the strategic needs of the area. Nichol and Blake suggest reserved, derelict or redundant sites should be considered ‘beige field’ rather than brownfield sites to better reflect their recreational, psychological or conservation value. They recommend assessment and site designation be combined with systematic urban capacity studies, which indicate areas of demand and need for open space.

### **Social and Cultural Values**

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The National Trust has appealed to state and federal governments to stop selling off public land so that the places which give structure to Australia's unique and diverse history can be conserved and celebrated (cited by Sutherland, 2000, 6). Social value in public lands include European or indigenous cultural heritage significance, or a site's contribution to sense of place, identity and amenity. 'Heritage value' and 'cultural significance' provide that a place, building or item has an intrinsic value that cannot be expressed solely in financial terms. Heritage significance is broadly defined in NSW and by the Commonwealth as including "historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance" (Godden Mackay, 1991, 139). The heritage values of public lands stem from the sequence of human occupation and use they show ranging from Aboriginal contact, exploration, rural settlement, transport, mining, water supply, forestry, defence and colonial administration (Lennon, 1993, 32). Adam (2001, 47) suggests the length of tenure of public sites means they are often considered "givens in the landscape" and planning of surrounding development has often been predicated on their continued presence. Hayden (1995, xii, 8-9) argues public landscapes are storehouses for "social memories" because their natural and cultural features frame and often outlast the lives of surrounding residents.

Urwin and Searle (1991, 6, 10) recommend capitalising on public lands with natural or cultural qualities, to increase the amenity and environmental quality of areas undergoing consolidation and promote greater acceptance of increased densities by residents. This requires the retention of sites with significant environmental and recreational qualities, while those with less potential to contribute to urban environmental quality are disposed of for redevelopment.

### **Economic Values**

Selling surplus public sites for their financial value ignores wider economic values of retention including the economic value of heritage and non-heritage buildings, tourism value and the value such sites could contribute to local economic centres. Built heritage is important in attracting and retaining businesses, workers and tourists in a global economy (Searle, 1996, 60). Adaptive re-use of public buildings can create cultural and tourist resources providing significant community benefits (Moloney, 1992, 13) including short and long term employment – particularly sites with good proximity to other tourist attractions, innate interest to visitors and high quality facilities (Crocker, 1997, 155). Research in the UK indicates historic town centres attract more investment and weather recessions better than newer towns or centres that have lost character through successive redevelopment. In addition [heritage] listed office buildings demonstrate higher capital value, higher demand and greater market resilience than modern buildings (EH & LPAC, 1995, 34, 36). Given that many private companies have realised the heritage dividend in promoting corporate image, Lennon (1993, 38) suggests that government agencies could likewise capitalise on their long histories by promoting their own heritage.

The economic value of non-heritage buildings would be more widely recognized by the proper adoption of life cycle costing in decision making – as required by the principles of ESD. However Graham (1997, 112) notes current development frameworks view land and buildings as commodities to produce a financial return on the capital invested, not generally to provide economic benefits to the community. Despite responsibilities to maximize scarce resources and return on past investments and provide greater economic good, central governments in Australia require their agencies to follow this economic rationalist approach which finds new facilities (planned for a 20 year life span) cheaper than the re-use of old facilities, ignoring the length of service of existing structures (perhaps 100 years) and the complete amortisation of original construction costs (Brooks, 1997, 19).

### **Potential Public Values**

The NSW government's acquisition of the ex Caltex site on Ballast Point for rehabilitation for a harbourside park in Sydney neatly illustrates the potential value of certain sites, although sites already in public ownership obviously have stronger potential to enhance local distinctiveness or amenity or create focal public spaces. In planning new uses for former Defence sites, the Sydney Harbour Federation Trust has criticized the recent rapid "wholesale erasure" and subsequent replacement of a variety of past harbour landuses (ports, fisheries, transport, industry and defence) with a homogenous landscape of residential development, commenting:

"The potential of the site [is] exhausted in one fell swoop... [M]uch of the opposition stems from the fear of losing 'what might be'. The power of the sites that is felt most strongly by the public is their "potential" as public places." (ISHFT, 2000, 27-29)

### **Whose Values Are Considered?**

There are also power differences between levels of government and spatial inequities in the ability of communities to battle for retention of significant public sites. The greater financial and legislative resources available to state and Commonwealth governments means these often prevail over local councils and communities in such disputes. However communities with greater access to resources, or those in marginal electorates may fare better. Intensified planning intervention successfully overcame local opposition to intensive urban consolidation directed towards older industrial areas of Sydney including Pyrmont/Ultimo, South Sydney, Rhodes and Homebush Bay. Searle (1998) notes these areas had the bonus of public sites and weaker communities, but he points out the continued supply of such relatively uncontested spaces which the state can target for future redevelopment in this way, is shrinking rapidly.

Recognition of the non-financial values of public lands demonstrates the importance of integrating comprehensive assessment of individual sites with strategic studies of capacity and demand (across local and regional areas). Thus particular values offered by public lands can indicate optimal future uses and also be matched to the overall vision for an area.

### **GOVERNANCE ISSUES CONTRIBUTING TO THE PROBLEM**

The change in government ideology from an interventionist (Keynesian) to a neoliberalist (free market) approach to governance which values economic goals over social or environmental issues and promotes the ideological trilogy of competition, deregulation and privatization is the major factor behind government sale of public assets. The result is a focus on management and efficiency rather than policy, process and propriety (the traditional strengths of the public sector) and the treatment of public goods as tradable goods (Rockman, 1998, 20 and Hughes, 2000). This approach to governance has been widely questioned (eg Olson, Humphrey and Guthrie, 2001, 5; Falkman, 1998 cited by Olson et al, 2001, 5 and Gleeson and Low, 2000) as governments exist to provide outcomes such as equity and effective service provision that the market is unable to deliver. Neoliberalism has increasingly decentralized public sector agencies into stand-alone entities that must demonstrate economic management by realizing funds from surplus assets in order to justify budget requests and qualify for capital works funding. This promotes the identification, disposal and sometimes involvement in the redevelopment of surplus assets by individual agencies in an ongoing effort to fund activities. Aging assets with high maintenance costs, and higher value sites such as waterfront property are naturally targeted. While government property can doubtless become redundant for its past use, a distinction between place redundancy and specific use redundancy is important. McConnell (1997) challenges the uncritical acceptance of redundancy, noting it is often a matter of choice and can be overcome with a commitment to creative re-use.

Searle and Cardew (2000, 368-70) have outlined how successive NSW governments have used the sale, lease or exchange of government land to attract major investments including Darling Harbour, Sydney Casino, the 2000 Olympic Games development, Fox Studios and others. They note that

many cases involved threatened heritage or conservation values, requiring state intervention including new State Environmental Planning Policies (SEPPs), legislation or development corporations to overcome opposition and block public involvement in the planning process. In most cases taxpayers experienced massive cost blow outs or low returns from these sales or long term leases while the full social, environmental and economic costs remain unknown. As the public interest comes to be defined only in economic terms and secret deals are justified by 'commercial in confidence' claims, Gleeson and Low (2000, 112) note neoliberalism places huge faith in the ability and wisdom of politicians due to the systematic elimination of alternatives, open and informed debate and transparency.

Various commentators have noted the links between urban consolidation policies and government disposal programs including Bunker (1988), Searle and Cardew (2000) and Adam (2001). The use of surplus public sites for higher density infill development – neatly achieves both savings on infrastructure through urban consolidation and short term funding for government agency activities. The impact of consolidation on Sydney land values has increased the attractiveness of asset sales. However, the ad hoc application of urban consolidation policies in NSW in particular has been widely criticised – for example by the National Trust (1995), Sperling (1997), Searle (1998), Adam (2001) and others. Gleeson and Low describe urban consolidation in Australian cities as having been applied “crudely and thoughtlessly, as an open invitation to developers to make private profits from communal values such as pleasant environments with good access to services” (2000, 108).

The lack of any consistent procedure at either the Commonwealth or state level means government asset disposal currently occurs in any number of ways. There is no requirement for the consideration of the non-financial values to the community of public properties nor is there any set policy that these be evaluated against space, location and other requirements of surrounding areas. In fact agencies that assess values or suggest alternative public uses for sites would be considerably disadvantaged financially under current conditions (Adam, 2001).

McCarthy (1998) claims the sale of Commonwealth properties poses “dire threats” to parts of the National Estate. The ‘Schofield Report’, which reviewed the management of Commonwealth owned heritage properties, noted that while 300 Commonwealth properties were heritage listed, 625 properties (1,190 buildings) with probable heritage significance were identified (CRHOCP, 1996a, 31). It was noted that the Commonwealth cannot guarantee good outcomes in the use and re-use of such assets while agencies are subject to conflicting objectives. Furthermore the notion that disposal can occur unencumbered if a property is not heritage listed is clearly inappropriate given the absence of comprehensive assessment and listing (CRCOHP, 1996, 63). The report strongly criticised the Commonwealth’s failure to manage its own heritage properties, stating:

“Publicly owned properties are an integral part of the social fabric of many communities and there is an expectation that the Commonwealth, as custodian, will conserve, retain and manage these properties responsibly.” (CRCOHP, 1996, 3)

The management of public property assets is no better in NSW where an Auditor General’s report into government property estimated \$750 million of ‘missing’ government real estate (Audit Office of NSW, 2002). The report emphasized the need for co-ordination of government property information and the establishment of a single, comprehensive record of all NSW government property, including Crown land. While no centralised or regulated asset disposal process exists, State Environmental Planning Policy (SEPP) 8 promotes the ‘orderly and economic use’ (development) of surplus public land but, as noted by Cox (2002), provides it with no protection.

Under Total Asset Management (TAM) guidelines NSW government agencies must submit asset strategies on property accommodation, capital investment, maintenance and disposal to Treasury as

part of annual funding submissions to cabinet (GAMC, 2000). Assets identified as surplus are to be “assessed”; *advantages* to government, agency and the community of divesting the asset are also assessed; opportunities for increasing asset value are identified and the disposal plan is implemented (GAMC, 2000). TAM guidelines also stipulate heritage management to be core business for agencies and require preliminary assessments of a site’s potential as open space in the context of the State Government’s Open Space Strategy (which has not been updated since 1988). However, these guidelines conflict with other government requirements of realising maximum price from the sale of surplus sites.

A NSW Auditor General’s report into disposal of Sydney Harbour foreshore land has found no evidence of studies to understand sites, statements of cultural significance, supporting evidence or the involvement of community groups in cases of disposal of harbour lands (Audit Office of NSW, 2003, 16). Accordingly, the report recommends a more defined and transparent process which includes the participation of affected groups; planning instruments requiring assessment of the *long term impact* of disposal on the *whole* of the harbour; the development of an overall strategic land use and development plan for the harbour and the earlier development of well considered proposals for the non commercial uses of foreshore land, such as public open space and working harbour uses. Like other government sites, the report found that disposal of foreshore land is “considered largely at a project level with inherent emphasis by the proponent on financial returns”, despite ‘guiding principles’ announced by Premier Carr in 1997 which include the establishment of whether a site is suitable for regionally or locally significant open space as a *first step* in determining future uses for a surplus foreshore site (Audit Office of NSW, 2003, 4, 10). Significantly, the report’s findings note that the current governance framework is too complex and not equipped to drive necessary actions in an holistic way.

While government projects involving proposed works costing over \$500,000 require economic appraisal or cost benefit analysis (CBA) (NSW Treasury, 1999, 5), criticisms about the use of CBA in public asset disposal have been noted. Spiller (1990, 194) notes that although sale on the open market may maximise short run revenue for government, it can result in unacceptable negative externalities on surrounding land uses. He argues for constraints on future uses such as recycling the site for community uses or being disposed of with restrictive planning controls. He points out that as custodian of the planning system, government is obliged to go further than a conventional developer and should fully assess the degree of appropriate planning constraints to “curtail development potential and hence residual land value” (1990, 195). In practice only measurable factors tend to be counted in CBA and there is pressure to heavily discount deferred benefits (including to future generations), resulting in an inherent bias towards development over conservation. Spiller argues for a social time preference (discount) rate, rather than a rate derived from capital markets because markets reflect short-term adjustments and individual preferences while ignoring externalities. Governments must consider overall impacts of decisions on all parties and have a responsibility to think long term so they should be conservative about discounting future benefits and costs (1990, 196).

Apart from the financial focus of government decision making, there are other governance issues including the lack of interagency co-ordination which results in missed opportunities to re-use surplus sites for other public uses; state pressure on local governments to rezone sites for urban consolidation; and other spoiling tactics such as the Defence department’s refusal of access to sites by state agencies to make assessments (cited by Adam, 2001, 50). Individual agencies cannot be wholly blamed for policies imposed by central governments and there is a demonstrated need for policy overhaul and a more centralised and strategic approach to all disposal decisions. Recent high profile Sydney cases dramatically illustrate the problems in current government asset management and disposal programs. The NSW Health department’s proposed closure and partial

sale and redevelopment of Rozelle Hospital (known locally as Callan Park) and the redevelopment of the Commonwealth's ADI St Marys (former Defence) site are presented below.

## CASE STUDIES

### **Rozelle Hospital (Callan Park)**

There have been three unsuccessful state backed attempts to sell parts of the 61 hectare Rozelle Hospital (Callan Park) foreshore site in Sydney's inner west. The site's cultural significance stems from its architecture, landscape and history of use. Listing of the site's grounds and various buildings on local, state and national heritage registers constrain redevelopment options for much of the site. The latest proposal, announced in 2001, to close the hospital and sell and redevelop 8 hectares to fund a new \$41 million facility at Concord was abandoned 17 months later. Although the hospital closure still looms, full scale psychiatric facilities (180 beds – down from 500 beds in 1990) still operate (Lennane, 2005 pers. comm.). Despite the neglect of many of the buildings, the community and local council opposed the proposal arguing for the retention of needed mental health and community support services on the site, even if the hospital moved.

Callan Park was the first purpose built complete facility for the "moral therapy treatment of the insane" (Lane, 1997, 152). The grounds form a rare late 19<sup>th</sup> century landscape and include the gothic style Kirkbride complex (the original asylum), two historic estates (although neglect and a recent fire have reduced one to a shell) and numerous 20<sup>th</sup> century buildings. The Charles Moore gardens which reflect the use of 19<sup>th</sup> century therapeutic garden theories promoting the importance of visual quality, and the Broughton Hall gardens created as occupational and psychiatric therapy for shell-shocked soldiers during WW1 (and later psychiatric patients) were both threatened by the proposal. An existing 1991 *Rozelle Hospital Heritage Study* concluded the significance of the site was due to multiple factors including the precinct's demonstration of major changes in mental health care; its original architecture and rare surviving late 19<sup>th</sup> century gentlemen's estates and landscape setting; its visual and social contribution to local identity and sense of place; the intact original landform which provided the setting for the original development of the site and surrounding suburbs and its high aesthetic quality within the local area. The study noted the significance of the site *as a whole* and recommended against any land sales to preserve the integrity of the site as a single area (cited by Leichhardt Council, 2001, 8).

Despite this, the Central Sydney Area Health Service engaged consultants to prepare a new heritage management plan under a brief requiring the nomination of areas that could be sold to finance the hospital's move to Concord and the restoration of remaining heritage items (FOCP, 2001). This not only bypassed the accepted sequence for conservation management but also discounted the public values associated with the retention of the whole site already recognised by the previous study. Apart from the capacity to accommodate needed mental health facilities, other significant values of the site include its indigenous heritage, remnant bushland, significant European plantings, its use for the oldest community garden in Sydney (Wotton, 1999, 40) and its major value as recreational open space. This is evidenced by over 40 years of community access to the grounds and the increasing use of the site as 'de facto regional open space' since intensive consolidation has occurred in the area. The site's size and diversity of landscape are unique in the inner west.

Along with the announcement of the proposal, the site was reclassified as 'state significant' under SEPP 56 to enable state approval, although the government treated the proposal as a *local* issue for media and public consultation purposes. Press releases described a compromise "park deal" for *local* residents and only residents in the immediate vicinity of the site were invited to the stakeholder meetings. Such inconsistency reduces the legitimacy of government decision-making. However, there were other major issues in the planning process for this proposal.



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The community consultation process was abandoned within weeks of commencing when too many residents turned up to the second meeting. While the masterplanning process continued (without community involvement), the amount of land to be sold was revised down from 12 to 8 hectares (due to a political promise that no open space would be lost) while the required return from the development doubled from \$41 million to \$80 million (after decontamination and rehabilitation costs were included). Sixteen months later, when the masterplan was released, floorspace ratios (FSRs) ranging from 1.1:1 to 2.0:1 were proposed (UDAS, 2002). This was far higher than the local plan's FSR of 0.5:1 and even the FSR of 0.8:1 used for redundant sites on the nearby Balmain peninsula. The changes doubled proposed dwelling numbers to around 1,200 dwellings (2,000 residents). Moreover, proposed building heights of 3 and 4 storeys appeared inconsistent with the floorspace ratios. Necessary further changes to SEPP 56 to allow the rezoning and increased floor space ratios (FSRs) were released along with the Masterplan. Funding and maintenance arrangements for the remainder of the site (including the promised 47 hectare 'park') were never detailed.

The community was also denied access to documents throughout the masterplanning process. The importance of public transparency in conservation plans and decision-making is well recognised and Kerr (2000, 33) notes that in particular, confidentiality on reports commissioned with public money is quite improper. It was particularly important in this instance where the government acted as proponent (Central Sydney Area Health Service), consultant (the Urban Design Advisory Service (UDAS) prepared the masterplan) and consent authority (Minister for Planning). Despite this, a few weeks after the release of the masterplan, its related studies and the proposed changes to the SEPP, the government announced it would not continue with either the Rozelle Hospital proposal or another proposed sale – that of Hunters Hill High School, after a close by-election result on the south coast.

Since the withdrawal of the proposal, the local Labor member (who had supported the proposal throughout) has tabled legislation to block any sale or residential development on the site (similar in part to an earlier bill proposed by the Friends of Callan Park). The dispute illustrates a number of the contested values that arise in public asset disposal including non assessment of significant values (or ignoring known values), ad hoc planning and constant revisions (as the required return escalated), problems caused by agencies attempting land development when this is outside their core business, and attempts to bypass established planning procedures and block public participation despite the fact that the site is publicly owned.

### **The Australian Defence Industries (ADI) site, St Marys**

The recent commencement of stage 1 of the 'Ropes Creek' development by Delfin Lend Lease was preceded by a decade-long dispute over the sale and redevelopment of the Commonwealth's 1,538 hectare munitions factory site at St Marys in Sydney's west. Attempts to bypass planning procedure (including appropriate assessment studies and public involvement) provoked political pressure and resulted in an extremely ad hoc planning process characterized by revised plans and compromise deals. Half of the site will now house 8,000 residences (initially 10,000 homes and 12,000 jobs) (Jamal, 2002, 2).

However opponents continue to campaign for the whole site to become a regional park or nature reserve in view of likely development impacts on the retained endangered bushland. Only fragments of pre 1750 Cumberland Plain Woodlands (under 6%) and less than 30% of Castlereagh Woodlands remain in the Sydney region (O'Brien, 1999) due to the attraction of urban development to the geological land type that supports them. 800 hectares of the ADI site have national heritage listing because the site contains much of these remnant woodland communities.

The site provides major regional habitat for 110 native bird species, nine mammal, ten reptile and eight frog species including the endangered green and golden bell frog, over 40 species of jewel beetles and 40 rare or vulnerable plant species (NPA, 2000). According to the National Parks Association (NPA) the major significance of the site includes its size and viability – which is large enough to maintain ecosystem integrity – and its potentially central role in linking other Cumberland Plain bushland fragments under a 3,500 hectare open space system along South Creek proposed by the Hawkesbury Nepean Catchment Management Trust. The NPA notes the lack of bushland and parks in the region, and suggests protection of native vegetation is also vital to alleviate a rising water table which is increasing soil salinity in western Sydney. Questions on whether the region can support the environmental load on air and water systems of further large scale urban development have been raised by Searle (1998) and the NPA argues the ADI site maintains local air quality acting as green lungs for an increasingly urbanised western Sydney.

While reduced development allows retention of some of the woodland communities, concerns about the edge impacts of urban development close to biological reserves have been frequently raised. McLoughlin (1997, 168-169) dismisses claims that such impacts can be overcome by water runoff controls and other measures as 'planning rhetoric'. She notes edge impacts on bushland include altered drainage, moisture and fire regimes; weed invasion; reduced native fauna due to domestic and feral animals; damage from construction works, dumped fill, and people (collecting bush rock, plants, firewood and the development and use of walking, riding and fire trails). Opponents to the ADI project argue it will destroy 300 hectares of endangered vegetation and retain a fragmented conservation/open space zone of 630 hectares that would be vulnerable to such impacts.

The ADI proposal has suffered from poor timing and an ad hoc planning process that was always predicated on development. The disposal/planning process commenced with the announcement of the sale deal. This was prior to the listing of the site as an endangered ecological community of Cumberland Plain Woodland by both the state and the Commonwealth governments (Adam, 2001, 49) and also before parts of the site were included on the Register of the National Estate. The almost simultaneous release of Lend Lease's first Masterplan with the government's Regional Environmental Study 1995, then the state approval of the REP and planning strategy in 2000 – in advance of the release of the recovery plan for Cumberland Plain Woodland – all demonstrate the questionable sequence of planning decisions. While ecological surveys remain incomplete, secrecy and lack of public access to the process have been constant issues (ADI RAG & SBAG, 2002). The joint venture agreement between Lend Lease and Comland is not available for public scrutiny despite hundreds of millions of dollars worth of public land being at stake and access to the site for any reason, including the completion of fauna studies, has been denied throughout the dispute. The lengthy battle illustrates the problems of premature decision-making without proper assessment of the significant values of the land involved. All stakeholders are adversely affected by the resulting delays – including governments and their joint venture partners, planners and community interest groups. Secrecy and denial of public access to the process and the site simply heighten the conflict.

Both cases demonstrate the weakness of compromise proposals on land with significant public value. Residential development on Callan Park would have alienated any support mental health services on the rest of the site and partial development of the ADI site impacts the ecological values that remain, due to the critical reduction in size and the urban impacts on endangered communities. The adequate assessment of non-financial values (and the balancing of such values with financial return), proper public participation and strategic and integrated decision-making are all clearly missing in both cases. The implications of political and ad hoc decision-making for government legitimacy and the impacts on all stakeholders from delays, backflips and cost blow-outs are considerable. The cases illustrate a narrow focus by governments on financial considerations and the retreat from other responsibilities – particularly managing urban environments.

## APPROPRIATE ROLE OF GOVERNMENT

### The need for Legislation and Categorisation

Principles for the appropriate disposal of public assets have been suggested by various groups including: the Australian Heritage Commission, Protectors of Public Lands, National Parks Association, Sydney Harbour Federation Trust and the Audit Office of NSW. All call for a public process involving the identification and assessment of significance as a first step and the full exploration of future use options, with the retention in public hands of land with important public values. It is notable that in NSW procedures for assessment of public values, the identification of appropriate uses, management and disposal are already required under legislation for both Crown land and local government land under the *Crown Lands Act 1989* and *Regulation 1995* and the *Local Government Act, 1993*. However, the NSW and Commonwealth governments have not enacted similar legislation to protect the public land under the control of most of their agencies.

The management of Crown land involves completing an inventory of land parcels, assessment (including public exhibition) of the land's capabilities for various purposes and finally the identification of suitable land uses (including sale, lease, reservation, special purpose or future public use) after consulting applicable policies and public agencies (Farrier, Lyster and Pearson, 1999, 130-132). The process represents strategic planning although continuing demand for new tenures and limited resources have more often led to case-by-case assessment. Meanwhile, land controlled or held by local government is classified as either 'operational land' which may be dealt with relatively freely, or 'community land' which is far more limited in terms of its management, development or disposal. Community land includes natural or culturally significant areas, sports grounds, parks, land subject to trust or covenant restrictions or land for general community use. Sale or disposal of community land requires its reclassification to operational land using a process that includes a public hearing, public submissions and the creation of a new local plan (LEP). Court decisions such as *Bathurst City Council v PWC Properties Pty Ltd* reinforce the importance of respecting the reclassification process.

A similar categorisation system was proposed for Crown land in the 1988 the *Victorian Lands Bill*. 'Public land' would be reserved and maintained for the benefit of present and future generations because of its various values, including its conservation, historic, recreational, tourist, natural, social, cultural or strategic value for present and future generations. 'Government land' was to be Crown land not meeting such criteria, and could therefore be viewed as a real estate asset. Mant (1989) has suggested the strength of the bill was its reversal of the major assumption that Crown land is available for alienation unless it is specifically 'reserved' for a public purpose. Instead, parcels would need to be specifically identified and transferred from the public land category to the government land category prior to alienation – a process requiring a public inquiry and report, and sometimes, an Act of Parliament. All public land would be further categorised (eg for wilderness or forest reserve), managed according to management plans and viewed as heritage to be passed on to future generations. The rise of neoliberalism in Victoria resulted in the Bill not being implemented.

Legislation for a publicly accessible assessment and categorisation process would provide protection for the values of public land while allowing for land to be more freely dealt with if little value to the public is demonstrated. As Mant has noted, a distinction between public (or community) land and government (or operational) land enables the asset value accounting principles to be applied to government land without being *inappropriately applied* to public land. Categorisation instantly and clearly flags the development potential or public value status of sites to all stakeholders. The current lack of political will at both Commonwealth and state government levels to implement such legislation to protect significant public land, reflects an unsound (and unsustainable) reliance by the public sector on windfall gains from asset sales to help fund public goods and services.

### **The obligations of governments**

Better outcomes require governments to take a more strategic, integrated and open approach, which allows for comprehensive public involvement in decision-making with respect to public assets held in trust by government agencies. As custodian of the public estate, governments and their agencies have legislated responsibilities to identify and protect all heritage assets under their control.

Moreover, Spiller has noted that as custodian of the planning system, governments are also obliged to consider the long term and strategic impacts of their decisions. They arguably should go further than a conventional developer and curtail development potential on surplus sites when necessary (1990, 195). However the case studies show that governments not only do not act to protect public interests this way but also are inclined to override or change their own planning rules to realise the financial value of public sites in spite of potential or known significant public values. A major change in culture is necessary. It is worth noting that on the former Prince Henry Hospital site at Little Bay in Sydney, NSW Landcom have recently demonstrated that encumbrances can be combined with high commercial returns in redeveloping surplus sites. In that case, lots were sold for strong prices despite design restraints, time limits for development and community title obligations to ensure continued maintenance and funding for important assets – (Deegan, 2005, 12).

While the recognition of the custodial role of government is needed, agencies responsible for urban planning in particular play a strategic role in the future use of public sites. The scale and pace of consolidation in bringing large numbers of residents closer together mean public infrastructure, services and open space assume more critical importance. Yet the application of urban consolidation in Sydney so far demonstrates little evidence of the spatial analysis of infrastructure including capacity and expected loading called for by Bunker (1988, 80) who argued consolidation should be gradual, locally differentiated and responsive with full appraisal of environmental and space thresholds for higher densities. Surplus sites – especially those with significant non-financial public value can play an important role in providing these new requirements in our increasingly complex urban areas. Assessment of individual sites should feed into an existing inventory of all public sites (which includes known values and disposal plans). This information should be used in conjunction with urban capacity and future demand studies. In this way the significant public values offered by some surplus sites can be matched to local and regional needs.

### **Centralised management and disposal of surplus sites**

Recently, the NSW premier announced the establishment of a new body, the Property Disposal Assessment Panel, to co-ordinate the sale and re-use of public property assets. Agencies must now prepare property disposal plans for all properties no longer needed and must provide details on property disposal activities including joint ventures and leasehold disposals. The initiative is aimed at improving co-ordination of disposal processes across government agencies and enabling “strategic assessment” of surplus government real estate assets. While centralisation is a crucial aspect of more strategic management, it is apparent the rationale for these reforms is focussed largely on “identifying opportunities to maximise the return to government and the community through selling property.” (Property Council of Australia, 2005). The initiative indicates that while centralisation of disposal may result in more efficient use and potentially re-use of public assets, the focus appears to be on the financial rather than other significant public values of public land.

During the 1990s, this centralised role of government land asset manager has been assumed by some state land agencies including the SA Land Management Corporation, WA’s LandCorp and the ACT Land Development Agency. Gleeson and Coiacetto (2005, 23) suggest this whole of government approach to asset disposal reflects an emphasis on more central and strategically coordinated management of state land assets as well as the recognition that public land agencies possess the required property management skills. The case studies demonstrate the logic of such

agencies (eg NSW Landcom) performing this role as opposed to individual agencies engaging in land disposal and development when their core activities are quite outside this area.

### **A better process for management and disposal of public assets**

It is evident the potential of many redundant public sites is being lost through short-term decision making which is often lacking in vigour, logic and transparency. There is a demonstrated need for a defined and legislated public process for public asset disposal at both the Commonwealth and state levels of government that provides for the following:

- adequate management and maintenance of operational and surplus public assets,
- full knowledge of the heritage significance of public assets,
- full assessment of all non-financial public values (environmental, social/cultural, economic, potential) of public sites,
- a strategic approach to what should be retained,
- a categorisation system to distinguish between sites with significant public value (categorised for example as 'public land') and non significant public sites ('government land') – which can be freely disposed of on the market,
- a comprehensive central register of all assets which flags the category, features and values of each site,
- full investigation of all options for future use,
- a co-ordinated and centralised approach to disposal which incorporates the accommodation needs of other agencies balanced with any need for retention by the public and any constraints on future use because of heritage or other value,
- full participation by the public in all these steps, and
- each of these steps must be taken in the appropriate order.

Only after following these steps, should final decisions about the future use of surplus public sites occur. The lack of political will to change current practice to date is evident, however the benefits to government from adopting a more appropriate disposal process are numerous:

- Such a process allows a genuine basis for disposal where public values are not significant.
- Poor property management by agencies exposes them to accusations of demolition by neglect.
- Selective interference in the planning system damages the legitimacy of government by indicating its inability to abide by its own rules.
- Decisions made prior to assessment studies result in delays, cost blow-outs, wasted resources and lost goodwill for governments, consultants, planners, developers and the public.
- Blocking the access of the public to the decision-making process for the future use of public land assets is not only inappropriate but also increases conflict unnecessarily.
- Full public participation would result in increased credibility of government; better decision making from the uncovering of important local information; easier project implementation due to community involvement and commitment to agreed outcomes and potential government-community partnership arrangements to foster shared responsibility for public assets.

The question of how government agencies deal with their surplus lands reflects the choice between prevailing governance paradigms of neoliberalism or more interventionist approaches to ensure the maintenance of public goods which are highly valued. Governments exist to provide the public goods and outcomes that cannot be provided by the market or by money alone. Responsible governments recognise the custodial and strategic role they assume by taking charge of public assets. Long-term quality outcomes can only be achieved by integrated and strategic decision making which includes consideration of the values which are important for quality of life now and in the future. An improved assessment and classification system for all public land will protect land that has continuing value as part of the public estate resource. Moreover, it will allow other less significant land to move rapidly through the disposal and redevelopment process to assume an

appropriate new role in the urban context. Meanwhile, the funds obtained from such disposal activities should be directed into the management of those public assets and sites that have greater significance in terms of continuing public value and which consequently should be retained.

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