

ENVIRONMENTAL DECISION MAKING

By Tom Uren*

This article analyses the New South Wales State Government's recent decision to build a sports stadium in Parramatta Park, Sydney. Mr. Uren argues that this decision was not made in accordance with the principles of Australian Labor Party policy nor was it within the spirit of the Environmental Planning and Assessment Act 1979 (N.S.W.). He further suggests that, in fact, the decision was made without a proper consideration of the Environmental Impact Statement. The article then argues that there is strong evidence to support the holding of a public inquiry into whether or not Parramatta Park is a suitable location for a sports stadium of the size contemplated. As the Park is an important part of our national heritage, the decision must weigh the general interest of the community against minor sectional interests.

The New South Wales Government decided in March 1981 to approve construction of a 40,000 seat American-style stadium in historic Parramatta Park. This decision and the background to it, provide an illuminating case study in the politics of the environment. New South Wales has what is arguably the best environmental legislation of any State in Australia. Yet the State Government, without holding a public inquiry, decided to approve the stadium proposal which involves one of the gems of our national heritage. It even failed to seriously examine the implications of the proposal. In 1974 the Committee of Inquiry into the National Estate reported that:

[t]he Australian Government has inherited a National Estate which has been downgraded, disregarded and neglected. All previous priorities accepted at various levels of government and authority have been directed by a concept that uncontrolled development, economic growth and "progress", and the encouragement of private as against public interest in land use, use of waters, and indeed in every part of the National Estate, was paramount.¹

The decision of the New South Wales Government on Parramatta Park takes us back to those days. It flouts the spirit and intent of Federal and State Labor policy and runs counter to basic Labor principles.

During the period 1969-1972 Federal Labor in Opposition developed the concept of the "national estate". The national estate embraces those parts of our heritage that have been created by people or nature and are unique or are things of beauty and which should be kept for the benefit of generations to come. In his policy speech in 1972 Mr. Whitlam promised that a Labor Government would preserve and enhance the national estate. The Federal Labor Government set up the Committee of Inquiry into the National Estate and later acted upon the committee's recommendations by legislating to establish the Australian Heritage Commission. The Labor Government also enacted the Environment Pro-

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1 *Report of the Committee of Inquiry into the National Estate*, (1974), Parl. Pap. No. 195, 334.

tection (Impact of Proposals) Act 1974 (Cth) which enables public environmental inquiries to be held into proposals affecting the environment. It is within the spirit of this Act and of Federal Labor policy that inquiries be held into proposals which may have major environmental effects or involve an important part of the national estate. Accordingly, the Labor Government established inquiries into sand mining on Fraser Island and into the Ranger Uranium Project.

The New South Wales Labor Government came to power pledged to reverse a legacy of neglect and disregard towards the State's heritage. In his speech before the 1976 election Mr. Wran said: "Let's create a State where all the unequalled natural beauties of New South Wales and the unparalleled heritage of our history are preserved for all time — for the lasting benefit of all the people of New South Wales and all the people of Australia". The new government established the New South Wales Heritage Council and set about overhauling the State's environmental and planning legislation, which led in 1979 to the enactment of the Environmental Planning and Assessment Act. One of the objects of that Act is "to provide increased opportunity for public involvement and participation in environmental planning and assessment".² Section 119 of the Act provides for the Minister for Planning and Environment to establish public inquiries into proposals affecting the environment.

There are two important principles running through these initiatives of Federal and State Labor Governments. They are open decision-making on environmental matters, and protection of our national heritage. These principles were swept aside by the New South Wales Government in its handling of the proposal of Parramatta Leagues Club to construct an American-style stadium at Cumberland Oval in Parramatta Park. Both the decision and the means by which it was carried out are in breach of State Labor platform. It is worth examining in a little detail how the decision was made and how this conflicts with the first of the above principles. Under the Environmental Planning and Assessment Act 1979 (N.S.W.), there were three courses open to the government to assess the stadium proposal: first, the matter could be referred to the Department of Lands; secondly, it could have the Department of Environment and Planning carry out an assessment; or, thirdly, have the Department conduct a public inquiry under section 119 of the Act. The Minister for Planning and Environment chose (or was instructed to choose) the first option, despite the over-whelming weight of evidence suggesting that an inquiry was warranted.

This contrasts with State Labor Platform on the environment, which requires:

The evaluation and reviewing of environmental impact statements by the Department of Planning and Environment, [and adds that] the Department should have the power to recommend approval, approval with condition, or rejection of the proposal based upon its evaluation of the EIS [Environmental Impact Statement].³

No recommendation from the Department of Environment and Planning was put before Cabinet, let alone the public. The State Labor Platform also states "Provisions should be made for public hearings on controversial or significant proposals."⁴ There can be no doubt that the stadium proposal was both significant and controversial.

At least six New South Wales Government agencies or departments — Police Department, Heritage Council, Public Works Department, Traffic Authority, Main Roads Department, Lands Department (Plan of Management for Parramatta Park) — produced reports which favoured holding a public inquiry or building the stadium at the Clyde Show-

² Section 5(c).

³ Australian Labor Party, N.S.W. Branch, *New South Wales Platform* (1980) 13.

⁴ *Ibid.*

ground site. The environmental impact statement prepared for the Parramatta Leagues Club concludes that, on every ground except cost, Clyde Showground is a far superior site to Cumberland Oval.

This in itself makes a strong case for an inquiry. Never before has a developer's EIS been so damaging to the developers' proposals. Moreover, while the study argues that the Clyde Showground alternative would be about \$10 million dearer, both the Public Works Department and Traffic Authority have strongly questioned these calculations. They estimate the difference to be about \$2 million. The evidence contained in the EIS and government reports strongly suggests that a stadium at Cumberland Oval will be a planning nightmare and will create enormous public costs. For example, the Police Department argues that 80-90 police will be required for crowd and traffic control with a capacity crowd. The Traffic Authority says that 45 kilometres of residential street will be parked out and traffic will take over two and a half hours to clear on capacity crowd days. These reports and the EIS clearly indicate that at Clyde there would be less traffic congestion, fewer parking problems, far less disturbance of residential areas, better access to public transport, no visual degradation and less noise disturbance. Particularly disturbing is the potential impact of a stadium at Cumberland Oval on the Parramatta City centre. Parramatta is identified in the Sydney Region Outline Plan and its most recent review as the second most important city centre in the Sydney metropolis and a focal point for growth.

Federal Labor proposes construction in Parramatta of an Australian Government Centre which would house 5,000 public servants and include community and entertainment facilities. The State Government has announced it will build a State office block in Parramatta. As Parramatta grows as a centre for employment and cultural/entertainment activities, there will be an increasing chaos as a consequence of stadium generated traffic and parking. The stadium is certain to distort the growth of the Parramatta City centre. Clearly, the decision on where to locate such a stadium is a planning matter. The New South Wales Government body competent to advise on planning matters is the Department of Environment and Planning, not the Department of Lands. Why then was no formal planning assessment carried out by the Department of Environment and Planning? Even though the Government left it to the Department of Lands to assess the Parramatta Leagues Club Environmental Impact Statement, no report or recommendations from that assessment were ever put before Cabinet.

In December, 1980 the Department of Lands, as part of its assessment, called for submissions on the stadium proposal. It received around 2,200 submissions, some of which were very detailed. Three officers were assigned the task of reading, summarising and assessing these submissions. They could hardly have completed this task when Cabinet made its decision no more than 20 working days after the deadline for receipt of submissions. The Minister for Lands had even tried to push a decision through Cabinet one week earlier. It is not clear whether in these difficult circumstances the Department provided any report or recommendations to the Minister for Lands. If so, they did not reach Cabinet, nor have they been made public. In the absence of any better explanation, those who went to the trouble of making submissions could reasonably assume that they were pawns in a public relations exercise.

The second principle discussed above, is the protection of our national heritage. Parramatta Park is part of the cradle of our nation. It is the birthplace of Australian agriculture. Old Government House which dates from 1790 and other historical structures and remnants can be found in the Park. Parramatta Park was declared as such in 1857. It is on the register of the National Estate compiled by the Australian Heritage Commis-

sion. The New South Wales Heritage Council considers "Parramatta Park to be an item of the State's environmental heritage", and has stated: "perhaps more than any other item in New South Wales, Parramatta Park embodies all the attributes and satisfies all the criteria for such consideration". The Heritage Council said in a submission on the Plan of Management for Parramatta Park that it considers the stadium proposal to be "disastrous for the future of the park as a heritage item". Why then, when faced with such advice did the New South Wales Government fail to seriously examine the option of locating the stadium at Clyde Showground? This could have been done through a public inquiry. It was after all the Parramatta Leagues Club EIS which proposed Clyde as an alternative. The Government's action falls short of what one would expect of a Government committed to preserving the national estate.

The New South Wales Cabinet decided that the Minister for Lands should introduce legislation to amend the 1857 law which set aside Parramatta Park. The proposed law, the Cumberland Oval Bill 1981 (N.S.W.) allows a lease to be entered into with the Parramatta Sports Club Ltd., so that the company can construct and operate the stadium on public parkland. Such alienation of public parkland runs counter to Labor principles. State Labor Platform on Urban Development states:

No development, other than embellishment, should be allowed on park land or reserved open space, except that in the case of reserved open space, this should be subject to negotiation provided that an equivalent or better form of open space can be substituted.⁵

The loss of historic Parramatta Park cannot be properly compensated for by a gain of parkland elsewhere. The Cabinet decision is in clear breach of this important part of Labor Platform.

The Parramatta Leagues Club withdrew its original development application to Parramatta City Council pending passage of the Cumberland Oval Bill. This was to avoid a legal challenge over the granting of exclusive rights to public parkland along the lines of the *Bronte Splashers* case.⁶ Cabinet decided when approving the stadium proposal that the new development application should be lodged with Parramatta City Council and considered under the Environmental Planning and Assessment Act 1979 (N.S.W.). This is, of course, the appropriate legislation. But within weeks of that decision, pressure was mounted by the Parramatta Leagues Club to have that legislation and the Local Government Act 1919 (N.S.W.) over-ridden by the Cumberland Oval Bill. Legal advice prepared by the Leagues Club's solicitors argues that opponents of the stadium would have opportunities under those Acts to contest any development approval in the courts, and such litigation could take up to two years to resolve. The State Crown Solicitor, in a separate advice to the Premier's Department, agreed with that opinion. The Leagues Club's solicitors also advised that the potential for delay could be substantially removed if the Cumberland Oval Bill were to provide that:

Notwithstanding the provisions of the Environmental Planning and Assessment Act 1979, the Local Government Act 1919, the Height of Buildings Act 1912, the Parramatta Planning Scheme Ordinance, Ordinance 70 under the Local Government Act 1919, the Parramatta Domain Act 1857, or any other statutory provision, regulation or ordinance, or the provisions of any trust or dedication affecting Cumberland Oval, the erection or carrying out of any building or works upon Cumberland Oval would be lawful if erected or carried out in accordance with plans and specifications approved by the Minister for Lands.

⁵ *Id.*, 26.

⁶ *Attorney-General v Waverley Municipal Council* (1979) 38 L.G.R.A. 372.

Following such a course of action would be tantamount to sweeping aside the laws of the land to suit a powerful sectional interest. The Government did not proceed with such draconian legislation. But it has decided to take the matter out of the City Council's hands, declaring it a "state policy" issue under the Environmental Planning and Assessment Act 1979 (N.S.W.). By doing so it hopes to limit the scope for citizen objection to the granting of approval for the stadium proposal.

Nonetheless objections are certain to be lodged in the courts by citizen groups. The Government has clearly not acted in accordance with Labor policy nor with the spirit of its own environmental and planning legislation. Moreover, there is a substantial legal argument that it has not acted in accordance with the letter of that legislation. The law clearly spells out that the many implications of such a proposal, including the traffic and parking effects should be considered. Any litigation is likely to be a costly and lengthy affair. The courts are however not the appropriate forum in which to canvass the merits of the proposal, nor whether its effects have been properly considered. It is a proposal whose implications are of such a magnitude that they should be examined by a public inquiry to be established under section 119 of the Environmental Planning and Assessment Act 1979 (N.S.W.). But the Government has left citizens' groups with no option but to take the matter to the courts. The New South Wales Government's actions on Parramatta Park are those of a government more concerned with short-term political considerations and private interests than with the proper planning of our cities or the preservation of our heritage for future generations. Their actions have tarnished Labor's principled record on the national estate.

Parramatta Park can only be protected for future generations through the concerted action of people who are concerned about our national heritage. The public should be kept informed of the Government's actions and the Government kept under pressure through letters to the editor, rallies, petitions, delegations and other peaceful forms of protest. Those who want a public inquiry should put resolutions to meetings of their trade unions, community groups and Labor Party branches, and forward these to the Premier. Action through the courts is one of many ways of seeking to reverse the Government's appalling decision. It is ultimately people's action which will be decisive in the battle to protect the environment and to preserve our national heritage for future generations. We cannot simply put our faith in Governments to carry out these tasks. This is the case no matter how good are the stated policies of the Government and its environmental laws.

